



TETON COUNTY
PLANNING & ZONING

AUG 17 2010

RECEIVED

Heritage Peaks Subdivision

NAME OF SUBDIVISION/PLANNED UNIT DEVELOPMENT

PRELIMINARY PLAT

SUBDIVISION/PLANNED UNIT DEVELOPMENT APPLICATION

The Preliminary Plat is the second of three steps in the development process. Upon receipt of the required materials the planning staff shall stamp the application received and prepare a staff report. Once the Planning Administrator or his designee has reviewed the staff report and deemed the application complete a public hearing will be scheduled with the Planning and Zoning Commission. It is recommended that the Applicant review Titles 6, 8 and 9 of the Teton County Code prior to submittal. These Titles along with application materials are located on the County website at www.tetoncountyidaho.gov. The planning staff is also available to discuss applications and answer questions prior to receiving an application.

To expedite the review of your application, please be sure to address each of the following items.

SECTION I: PERSONAL AND PROPERTY RELATED DATA

Owner:	<u>D+R Family Limited Partnership</u>		
Applicant:	<u>D+R Family Limited Partnership</u>		
Phone:	<u>(307) 690-11638</u>	Mailing Address:	<u>P.O. Box 417</u>
City:	<u>Driggs</u>	State:	<u>ID</u>
		Zip Code:	<u>83422</u>
Engineering Firm:	<u>A-W Engineering</u>	Contact Person:	<u>Sharon Woolstenhulme</u>
		Phone:	<u>(208) 787-2952</u>
Address:	<u>P.O. Box 139 Victor ID 83455</u>		
E-mail:	<u>aweng@</u>		

Location and Zoning District:	
Address:	<u>2000 W Hwy 33 Teton</u>
Parcel Number:	<u>RP66N45E343800</u>
Section:	<u>34</u>
Township:	<u>6N</u>
Range:	<u>45E</u>
Total Acreage:	
Proposed Units/ Lots:	<u>2 lots.</u>
Proposed Open Space Acres:	
Proposing a Subdivision <input checked="" type="checkbox"/>	
Zoning: A 2.5 <input checked="" type="checkbox"/> A 20 <input type="checkbox"/>	
Proposing a Planned Unit Development <input type="checkbox"/>	
Planned Community <input type="checkbox"/> Rural Reserve <input type="checkbox"/>	

- ☒ Latest recorded deed to the property
☒ *60% of proposed unit base total

- ☒ Affidavit of Legal Interest
☐ Concept Plan approved on 10/30/2008

* Acceptance of this amount does not suggest there will be a particular number of units approved. There are no entitlements granted by the payment of the per lot/unit fee. A refund due or balance due of the total lots approved at final plat shall be settled prior to recording of final plat.

I, the undersigned, have reviewed the attached information and found it to be correct. I also understand that the items listed below are required for my application to be considered complete and for it to be scheduled on the agenda for the Planning and Zoning Commission public hearing.

• Applicant Signature: Debbie L. Roberts Date: 8-13-10
8-13-10

I, the undersigned, am the owner of the referenced property and do hereby give my permission to AW Engineering to be my agent and represent me in the matters of this application. I have read the attached information regarding the application and property and find it to be correct.

• Owner Signature: Debbie L. Roberts Date: 8-13-10
8-13-10

SECTION II: CHECKLIST OF ITEMS REQUIRED ON THE PLAN/PLAT DOCUMENT

1. Number of Plan/Plats:

- Thirty (30) Preliminary Plats (18" X 27" or 11" X 17") Prepared By A Professional Land Surveyor/Engineer
- Ten (10) Master Plans (18" X 27" or 11" X 17") Prepared By A Professional Land Surveyor/Engineer

2. Items on Plan/Plat:

- Plans and Plats are labeled in lower right hand corner
- Section(s), Township, Range
- Accurate angular and lineal dimensions for all lines, angles and curves used to describe boundaries, streets, alleys, and easements areas to be dedicated for public use, and other important features are shown.
- Identification for all lots and blocks and road names are clearly shown. Lot lines show dimensions in feet and hundreds.
- Perimeter subdivision lines are accurately related by distance and bearings to established roads or street lines, or 1/16 section corners, and closures are a minimum of one (1) foot in 5000 feet.
- True angles and distances to the nearest established street lines or official monuments are accurately described in the plat and shown by appropriate symbol.
- Radii, internal angles, points and curvatures, tangents, tangent bearings, chord, chord bearings and the lengths of all arcs are shown.
- Accurate location of all monuments and fire protection to be installed, shown by appropriate symbol, and all of the U.S., State, County, or other official bench marks, monuments, or triangulation stations in or adjacent to the property.
- Each lot corner is monumented or witnessed with permanent marker, in accordance with the rules and regulations of the State Board of Registration for professional engineers and land surveyors, and the markers are shown either by legend or separate description on the plat.
- Accurate boundaries and legal descriptions are given of any easement or area to be dedicated for public use, with the purpose indicated thereon, and of any area to be reserved by deed or covenant for the common use of all property owners or the general public.
- Vicinity map with any existing subdivisions within 1 mile and all existing road names
- Names of adjoining developments and ownership of surrounding land
- North arrow
- Contours
- Section and incorporation lines in and within 200 feet
- Boundaries and identification of zoning districts
- Building envelopes
- Setback requirements
- Road names
- Accurate Scale

ALTA SOLID WASTE. The Board has received a letter stating that \$29,077 in solid waste fees will be collected from Alta property owners and paid to Teton County, Idaho in FY 2011; also that the Alta Solid Waste District will provide \$5,000 to assist with purchase of a baler for recycling (Attachment #6).

● **MOTION.** Commissioner Benedict made a motion authorizing Solid Waste employee Saul Varela to carryover more than 80 hours of PTO into FY 2011, provided that all excess hours will be used by January 31, 2011. Motion seconded by Commissioner Young and carried unanimously.

● **MOTION.** Chairman Rinaldi made a motion to approve hiring new solid waste employee Robert Baird at 89% of the Market Rate due to his previous experience with heavy equipment and working for Voorhees Sanitation. Motion seconded by Commissioner Benedict and carried unanimously.

The meeting recessed for lunch at 12:32 and resumed at 1:48 pm.

PUBLIC HEARING – 2011 Fee Increases

Chairman Rinaldi opened the public hearing at 1:48 pm and Clerk Hansen reviewed the proposed fee increases (Attachment #7). Chairman Rinaldi opened the meeting for public comment. There was none.

Planner Angie Rutherford said the new \$85 Plat Re-submittal fees were intended to cover the county's costs when the initial plat submitted has so many errors that it is returned for correction and then re-submitted.

● **MOTION.** Commissioner Benedict made a motion to approve Resolution 091301A Establishing Fees Effective 10-01-10. Motion seconded by Commissioner Young and carried unanimously. (Attachment #8)

PLANNING, BUILDING, GIS

HERITAGE PEAKS SUBDIVISION EXTENSION APPLICATION. Attorney Sean Moulton, representing the applicant, reviewed the history of the subdivision and documents provided (Attachment #9). He said the first proposal for developing this parcel was submitted in 2005 but never completed. A new application was submitted on 10-30-08 and has been delayed by the requirement and timing of a N-P study. The current proposal calls for 2 lots on 20 acres.

Ms. Rutherford said the application has been delayed by the NP study including gathering more information than is normally needed and recommends approval of the extension request. The Heritage Peaks Preliminary Plat application is scheduled for the November Planning & Zoning meeting; at the time this extension request was submitted, the applicant hoped to be on the September agenda.

● **MOTION.** Commissioner Benedict made a motion to approve the Heritage Peaks Subdivision Extension Request through July 30, 2011. Motion seconded by Commissioner Rinaldi and carried unanimously.

CEDRON HEIGHTS SUBDIVISION EXTENSION APPLICATION. Engineer Arnold Woolstenhulme, representing the applicants, said Keith and Betty Kunz want to subdivide their land in order to give each of their living children a small piece of land to build a home. The application has been delayed by the need and expense of an NP study. The Kunz's completed a lot split in 2009 so one son could build a home.

Ms. Rutherford reviewed the documentation provided (Attachment #10), recommending denial of the extension request because the applicant failed to diligently pursue preliminary plat approval after January 2010 due to additional costs related to the NP study. Mr. Woolstenhulme said they have only recently learned that Cedron Heights was subject to the 2007 NP requirements, which would have allowed them to proceed with the Preliminary Plat hearing prior to receiving DEQ approval. The Kunz's have also submitted a letter guaranteeing to pay the costs associated with the NP study.

Commissioner Young said he respectfully disagrees with Ms. Rutherford's recommendation. He said the only apparent lapse in diligence was when the owners learned the project might cost an additional \$20,000-30,000 and that the benefit of the doubt should go to the applicant in any judgment of due diligence. Commissioner Benedict agreed, adding that it appears that the NP requirement did delay the application. Chairman Rinaldi said the applicants were under the impression that they could not pursue their application without a letter from DEQ, so she would also support granting an extension.

OPEN SPACE MANAGEMENT PLAN

HERITAGE PEAKS SUBDIVISION

Heritage Peaks is a proposed subdivision encompassing 20.00 acres, of which 7.72 acres is open space. Technically an open space management plan is not a requirement for this application because it is not being processed as a planned unit development. However this is being submitted to assure the public of the care that will be given to this pristine parcel of land.

The open space is located adjacent to State Highway 33, acting as a physical and scenic buffer between the State Highway and the residences of Heritage Peaks Subdivision.

The open space area will remain in the native flora and fauna that are presently growing.

Weed control will be a regular maintenance practice governed initially by the owner/developer, Mr. Reg Roberts, principle in the D&R Roberts Family Limited Partnership and then subsequently by the Heritage Peaks Homeowners Association.

The Declarant will reserve for itself, its successors and assigns, and grants for the benefit of all the owners and the Association, a perpetual easement across all private roadways within the Property for access to Lots.

Open Space land shall mean land depicted upon the Subdivision plat and limited to uses permitted by the joint consent of the lot owners. Open Space Land shall be maintained by the Heritage Peaks Homeowners Association.

Owner shall take all actions necessary to control noxious weeds as defined by the Teton County Weed Control Board and the Heritage Peaks Homeowners Association Board. All open space areas shall be kept free of noxious weeds. Because the timing for effective control of noxious weeds is critical, the Homeowners Association Board shall deem such timely control a priority item, both in scheduling and budgeting. Noxious weed treatment shall be limited to herbicides approved by the Teton County Weed Control Board.

To protect, preserve, and maintain existing wildlife on the property and to minimize the adverse effect of development on wildlife habitat, dogs, horses and other domestic animals shall be controlled at all times, per the Covenants, Conditions, and Restrictions for Heritage Peaks Subdivision.

AUG 17 2010

HERITAGE PEAKS SUBDIVISION

RECEIVED

TIME FRAME OF EVENTS

- 09/18/08 - CONCEPT APPLICATION SUBMITTED TO PLANNING & ZONING STAFF
- 10/30/08 - APPLICATION IS ACCEPTED BY THE PLANNING & ZONING ADMINISTRATOR 6 WEEKS LATER, STARTING THE CLOCK FOR THE 2 YEAR COMPLETION DATE.
- 11/2008 - DIFFERENT ENVIRONMENTAL FIRMS ARE EVALUATED BY THE OWNER TO MAKE A SELECTION FOR ONE TO PERFORM A LEVEL 1 NP STUDY
- 11/25/08 - ROCKY MOUNTAIN ENVIRONMENTAL IS ASKED TO SUBMIT A QUOTE TO PERFORM THE WORK.
- 12/08 - ROCKY MOUNTAIN ENVIRONMENTAL SUBMITS A PROPOSAL TO THE OWNER. A WORK ORDER FOR ROCKY MOUNTAIN ENVIRONMENTAL IS SIGNED BY THE OWNER, AUTHORIZING THEM TO PROCEED WITH THE LEVEL 1 NP STUDY
- 1/15/09 - ROCKY MOUNTAIN ENVIRONMENTAL BEGINS DISCUSSIONS WITH D.E.Q. REGARDING ANY CONCERNS AND REQUIREMENTS
- PEAKS THEY WILL HAVE. ROCKY MOUNTAIN ENVIRONMENTAL HAS DETERMINED THAT THE NUMBER OF LOTS IN HERITAGE WILL LIKELY NEED TO BE DECREASED.
- 1/16/09 - ROCKY MOUNTAIN ENVIRONMENTAL INFORMS THE OWNER'S ATTORNEY THAT D.E.Q. WANTS A DRAINFIELD SHIFTED AND ONE LOT ELIMINATED.
- 1/09 THROUGH 2/09 - A-W ENGINEERING WORKS ON DRAFTING REVISIONS TO PRELIMINARY PLAT; MASTER PLAN; ROAD PLANS; STORM & EROSION PLANS AND REQUIRED PRELIMINARY PLAT DOCUMENTS TO CONFORM TO D.E.Q. DIRECTIVES.

- 3/09 - ROCKY MOUNTAIN ENVIRONMENTAL SENDS AN E-MAIL INDICATING INTERNAL COMPLICATIONS WITHIN D.E.Q. WHICH RESULT IN TIME DELAYS FOR SECURING THE D.E.Q. LETTER REQUIRED BY TETON COUNTY.

- 3/25/09 - D.E.Q. ISSUES A LETTER WITH AN ADDITIONAL REQUIREMENT BEYOND THE TYPICAL SCOPE OF A LEVEL 1 NP STUDY, ACCORDING TO JENNIFER ZUNG OF HARMONY DESIGN.

- 4//09-5/09 - OWNER & A-W ENGINEERING ARE WAITING FOR WORK TO BE COMPLETED BY ROCKY MOUNTAIN ENVIRONMENTAL.

- 5/09 - ROCKY MOUNTAIN ENVIRONMENTAL STATES IN AN E-MAIL THAT D.E.Q. IS NOW BECOMING MORE STRINGENT AND ADDITIONAL TIME IS GOING TO BE NECESSARY TO ADDRESS ADDITIONAL D.E.Q. REQUIREMENTS. JOHN RICE OF ROCKY MOUNTAIN ENVIRONMENTAL STATES THAT HE CANNOT ESTIMATE THE AMOUNT OF ADDITIONAL TIME IT IS GOING TO TAKE TO ACHIEVE A PASSING NP STUDY.

- 6/09-01/10 - OWNER AND A-W ENGINEERING ARE WAITING FOR ROCKY MOUNTAIN ENVIRONMENTAL AND D.E.Q. TO REACH COMMON GROUND TO SECURE THE REQUIRED D.E.Q. LETTER

- 01/10 - THE OWNER HIRES MR. CLEVE BOOKER OF BOOKER GREY ENVIRONMENTAL TO HOPEFULLY HELP IN MOVING THE HERITAGE PEAKS PROJECT FORWARD.

- 01/10-03/10 - OWNER AND A-W ENGINEERING ARE STILL WAITING FOR THE ENVIRONMENTAL COMPANIES TO SATISFY D.E.Q. REQUIREMENTS.

- 03/02/10 - CLEVE BOOKER RECEIVES AN E-MAIL FROM MR. PATRICK VAILE, TETON COUNTY PLANNING & ZONING ADMINISTRATOR REITERATING THAT AN NP EVALUATION MUST BE SUBMITTED TO D.E.Q. AND A STAFF REPORT FROM D.E.Q. SUBSEQUENTLY RECEIVED BY MR. VAILE..

- SPRING/10 - HARMONY DESIGN IS RETAINED TO HELP MR. BOOKER COMPLETE THE ADDITIONAL WORK REQUIRED BY D.E.Q.

- 03//10 - 06/10 - HERITAGE PEAKS IS FURTHER REDUCED TO TWO LOTS, RESULTING IN PRELIMINARY PLAT; MASTER PLAN; ROAD

PLANS; STORM & EROSION PLANS; FACILITIES MAP;
LANDSCAPING PLAN AND SUPPORTING DOCUMENTS TO BE
RE-DRAFTED BY A-W ENGINEERING.

07/16/10 - D.E.Q. LETTER OF APPROVAL IS RECEIVED WHICH IS THE
DEADLINE TO SUBMIT THE PRELIMINARY PLAT APPLICATION
IN ORDER TO HAVE THE TWO FINAL REMAINING PUBLIC
HEARINGS BEFORE EXPIRATION DATE.

08//2010 - HOWEVER, A LETTER OF APPROVAL FROM EASTERN IDAHO
PUBLIC HEALTH HAD NOT BEEN SECURED. AN ORIGINAL
LETTER OF APPROVAL HAD BEEN RECEIVED ON
MARCH 1, 2007 AS PART OF THE FIRST APPLICATION FOR
HERITAGE PEAKS. HOWEVER, MARCH 23, 2010, EASTERN
IDAHO PUBLIC HEALTH RESCINDED THAT APPROVAL, SAYING
THEY WANTED TO KNOW THAT THE D.E.Q. ITEMS LISTED IN
THE D.E.Q. LETTER OF MARCH 25, 2009 WERE RESOLVED

BEFORE

THEY WOULD ISSUE AN UPDATED LETTER OF APPROVAL.

THE 2 MONTH DELAY IS ALSO CAUSED BY
DETERMINATIONS OF WHAT ARE INTERMITTENT STREAMS OR
IRRIGATION CANALS ON THE SUBJECT PROPERTY. A-W
ENGINEERING AND HARMONY DESIGN DO THE FIELD WORK
AND DRAIN FIELD LOCATION PLATTING TO MEET HEALTH
DEPT. REQUIREMENTS AND TO HELP MAKE THOSE FINAL
DETERMINATIONS. THAT WORK IS COMPLETED THE WEEK
PRIOR TO OBTAINING THE LETTER OF APPROVAL FROM
EASTERN IDAHO PUBLIC HEALTH.

08/16/2010 - EASTERN IDAHO PUBLIC HEALTH ISSUES THE LETTER OF
APPROVAL.

IT IS THE POSITION OF THE OWNER AND A-W ENGINEERING THAT THE
SIGNIFICANT TIME DELAYS THAT PREVENTED US FROM COMPLETING THE
FINALIZING OF HERITAGE PEAKS SUBDIVISION WERE CAUSED BY
GOVERNMENT AGENCIES, WHICH WERE OUT OF OUR CONTROL.

***** MEMO *****

To: Teton County Planning & Zoning Commission
Teton County Commissioners

From: Rochelle
A-W Engineering

Date: January 11, 2010

Re: Update on Heritage Peaks Subdivision

Due to the unforeseen challenges of getting DEQ's approval of the NP Study for Heritage Peaks, the owner, Reg Roberts, as decided to revise the layout of the plat. Mr. Roberts has decided to reduce the number of lots by half which will be a total of 2 lots instead of the proposed 4 lots.

The revised plat will be submitted to DEQ for their approval of the NP Study. After that has been received, A-W Engineering will be submitting the Preliminary plat application items to the Teton County Planning & Zoning office.

We will be requesting to be put on the agenda for our preliminary plat hearing once these items have been addressed.

Thank you-

Phone number: (208) 787-2952
Fax: (208) 787-2957.
Email: aweng@tetontel.com

W Highway 33

Spring Creek

Spring Creek

Intermittent Stream

Stream

Lot 1
(10 ac)

Lot 2
(10 ac)

Well Lot 1

Bldg Envelope Lot 1

Bldg Envel

Drain F
(100' x 100')

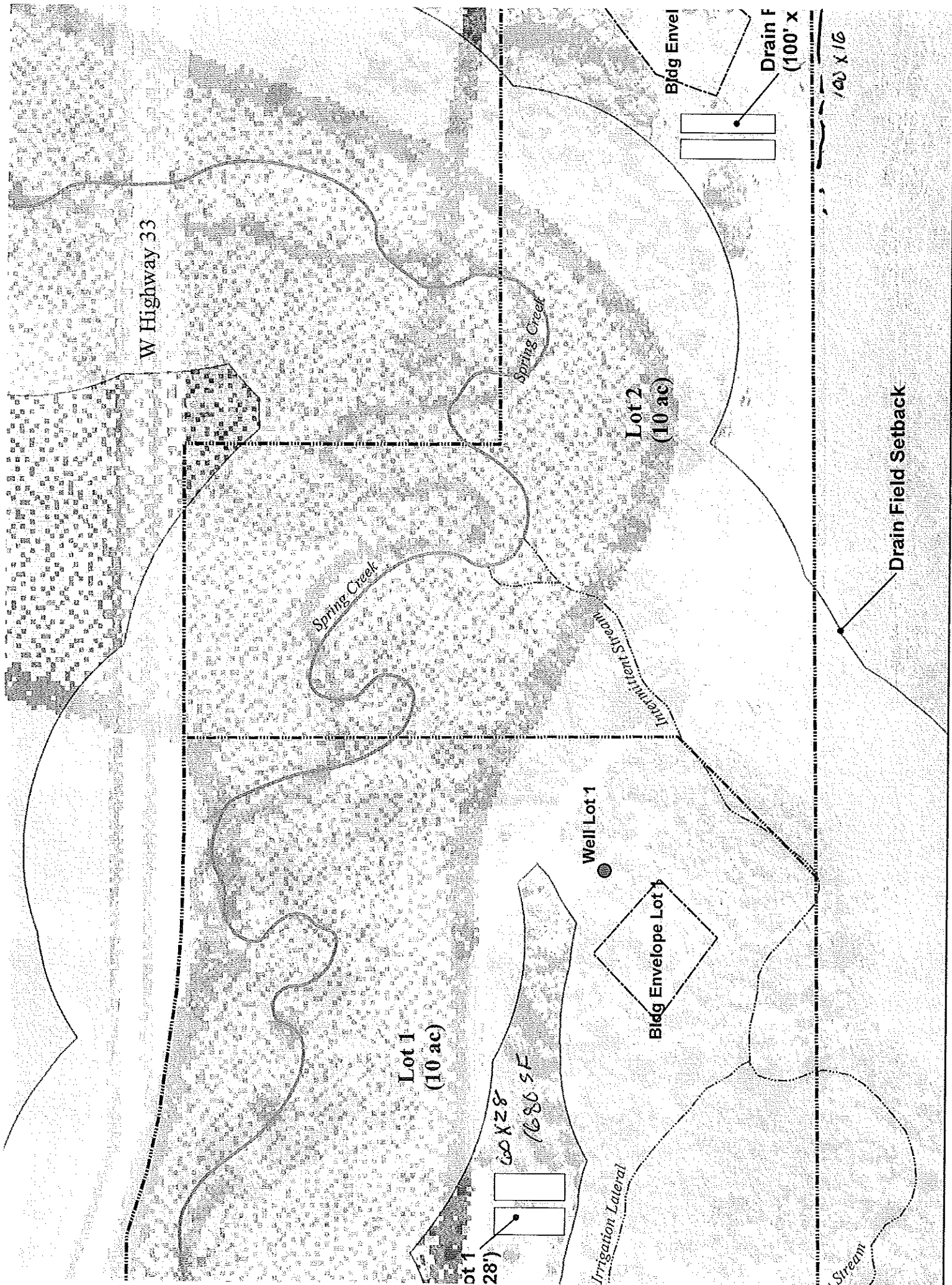
Drain Field Setback

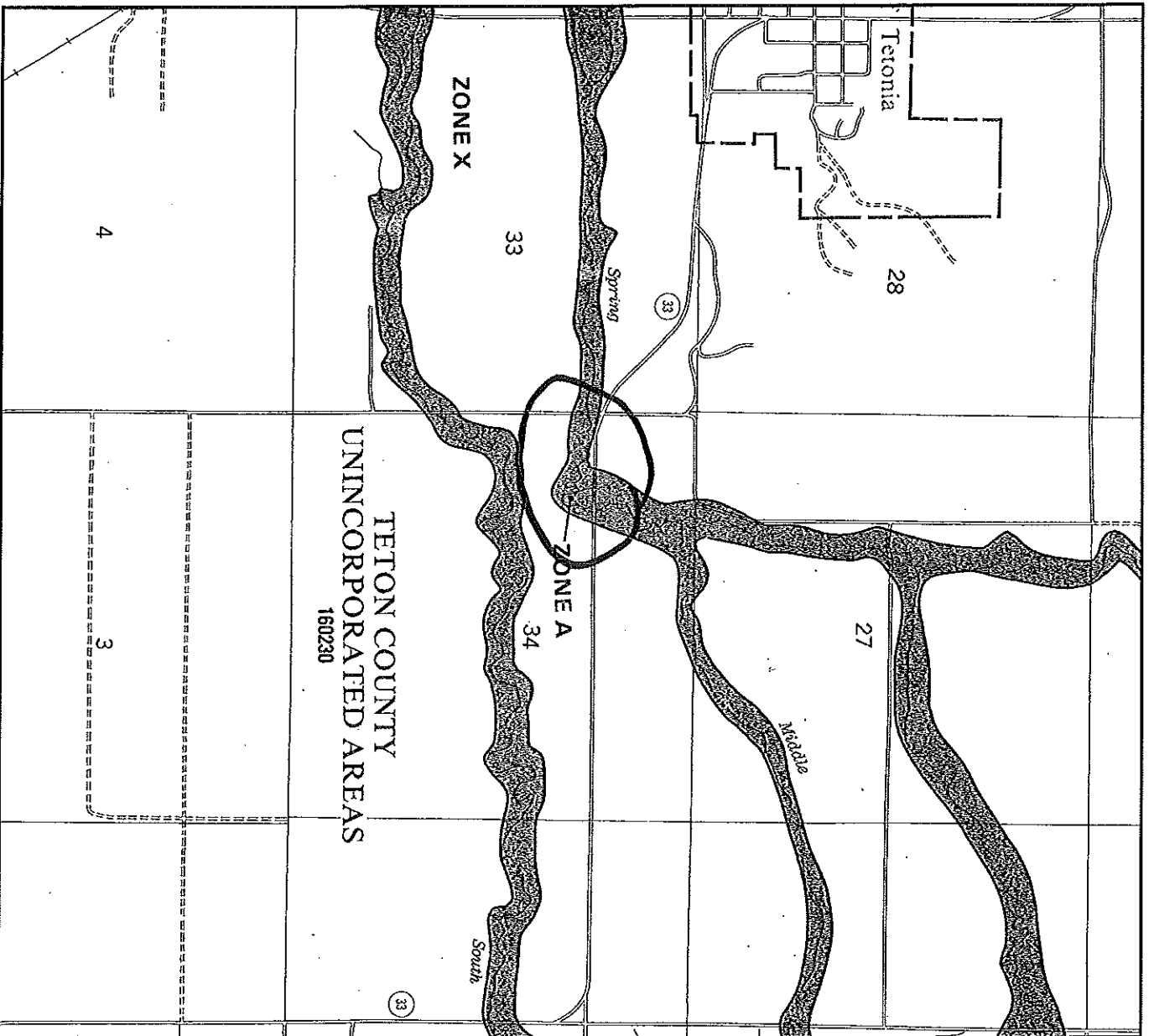
Lot 1
28'

60' x 28'
1680 SF

Irrigation Lateral

100' x 100'





APPROXIMATE SCALE IN FEET
2000
0

NATIONAL FLOOD INSURANCE PROGRAM

FIRM
FLOOD INSURANCE RATE MAP
TETON COUNTY,
IDAHO AND
INCORPORATED AREAS
PANEL 100 OF 175



CONTAINS
COMMUNITY NUMBER PANEL SUFFIX
UNINCORPORATED AREAS 160230 0100 0

MAP NUMBER
16081C0100 C

EFFECTIVE DATE:
AUGUST 4, 1988



Federal Emergency Management Agency

This is an official copy of a portion of the above referenced flood map. It was extracted using F-MIT On-Line. This map does not reflect changes or amendments which may have been made subsequent to the date on the title block. For the latest product information about National Flood Insurance Program flood maps check the FEMA Flood Map Store at www/nrc.fema.gov

FOR HERITAGE PEAKS SUBDIVISION

Recording Requested By and
When Recorded Return To:

Planning Administrator
Teton County Planning Department
89 N. Main Street
Driggs, Idaho 83422

For Recording Purposes Do
Not Write Above This Line

DEVELOPMENT AGREEMENT

THIS AGREEMENT is made and entered into as of the ___ day of _____, 20___, by and between D&R ROBERTS FAMILY LIMITED PARTNERSHIP and/or assigns (hereafter "Developer") and Teton County Idaho, a political subdivision of the State of Idaho (hereafter "County").

WHEREAS, it is the intent and purpose of the Developer to meet the conditions of approval for the final plat allowing the creation of Heritage Peaks Subdivision, as approved by the Board of County Commissioners of Teton County on _____, 20__.

WHEREAS, the Developer is the sole owner, in law or equity, of certain Property located in the County, which Property is hereinafter referred to as the "Development".

WHEREAS, it is the intent and purpose of the Developer and the County to enter into this Agreement that will guarantee the full and satisfactory completion of the required Improvements on the Property described in this Agreement and it is the intent of this Agreement and the parties to satisfy the Improvement guarantee requirements for the final plat recordation of the subdivision.

WHEREAS, the County has the authority to enter into a development Agreement for the construction of required Improvements associated with the Development.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

Section 1—Definitions

1.1 **DEVELOPMENT:** The subject of this Agreement, which is designated and identified as Heritage Peaks subdivision located on the Property described in Exhibit A in the jurisdiction of Teton County, Idaho. This definition shall include any and all future names or titles for Heritage Peaks subdivision.

1.2 **IMPROVEMENT:** Any alteration to the land or other physical construction located on or off the Property that is associated with this subdivision/PUD and building site developments.

1.3 **OWNER/DEVELOPER:** means and refers to D&R Roberts Family Limited Partnership whose address is 352 West 500 North Teton, Idaho 83452, the party that owns and is developing said Property and shall include and subsequent owner(s) or developer(s) of the Property.

1.4 **PROPERTY:** means and refers to the certain parcel(s) of Property located in the County of Teton, as described in Exhibit A.

1.5 **UNAVOIDABLE DELAY:** When construction is impeded as a result of strikes, lockouts, acts of God or other factors beyond the control, and ability to remedy, of the Developer.

Section 2—Planned Improvements. The Developer has divided the installation of the required Improvements into one phase. The Developer shall, and at its sole cost and expense, complete the road construction, install entrance and street signs, install telephone and electrical service, install fire protection, stabilize and re-seed areas of the Property disturbed by installation of Improvements, and complete all other required infrastructure for each phase as detailed in the Heritage Peaks Improvement plans dated _____, 2010, recorded in the Teton County Clerk and Records office on _____, 2010. Developer agrees that such Improvements shall be installed in compliance with Teton County's Title 9 and any design and engineering standards separately adopted by the County or other agencies responsible for providing services to the Development. The AW Engineering's estimated cost to complete all Improvements as of (date of estimate), 2010 is shown in Exhibit B of this Agreement. The Developer shall obtain an updated cost estimate within ninety (90) days prior to obtaining its Letter of Credit and starting construction of any Improvements in every phase, as set forth in Section 8 hereof.

Section 3—Signs. The Developer understands and agrees to install subdivision entrance sign(s) and street signs prior to the County being able to issue a building permit for a dwelling within the Development. Such signs shall be non-reflective and built in accordance with Teton County requirements, and in a size and shape appropriate to meet ASHTO standards.

Section 4—Public Improvements. The Developer shall designate the following road(s) as private for public use: Heritage Drive. The Developer shall maintain all public facilities, improvements, and open space for the Development according to Teton County standards and any standards separately adopted by the agencies responsible for providing services to the Development, until such time as the responsibility for maintenance of the public improvements and open space is turned over to the Homeowner's Association for this Phase of the Development. This transfer of maintenance responsibility shall occur when 100% of the lots or units have been sold. The Homeowner's Association shall collect dues, a portion of which will be used for maintenance of the public improvements and open space. The Developer shall notify the planning department in writing when the Homeowners Association is established and when the transfer of maintenance responsibility has occurred. A mailing address for future notifications shall also be provided.

Section 5—Off-Site Improvements. The Developer shall construct all off-site Improvements shown on the recorded Improvement Plans for Heritage Peaks subdivision, if any, following the design, engineering, and standards of the agency responsible for the Improvement(s). Off-site Improvements shall be included in the engineer's cost estimate requirements as set for in Section 2 of this Agreement. Developer may seek pro-rata compensation for these off-site Improvements, if any, as provided for in Title 9 of the Teton County Code and Section 41 of this Agreement.

Section 6—Building Permits. No lot or unit may be offered for sale or sold (warranty deeds transferred) prior to final plat approval and recording and the obtaining of the required financial security guarantee described in Section 19 for the construction and completion of Improvements. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County. Furthermore, Developer acknowledges that no certificate of occupancy for a residential unit shall be given until all Improvements have been completed and accepted in writing by the County Engineer and Planning Administrator.

Section 7—Schedule for Commencement and Completion of the Improvements. The Developer shall commence construction of the Improvements for the subdivision within one year after the recording of the final plat, and will complete construction of the Improvements within two years after commencement of construction of such Improvements. The Developer may be allowed extensions of time beyond the commencement or completion date for unavoidable delays caused by strikes, lockouts, acts of God, or other factors beyond the control, and ability to remedy, of the Developer. However, except for extensions for commencement of Improvements allowed for such unavoidable delays, if Developer does not commence construction of the Improvements within one year of recording of the final plat, the Developer will lose its approvals and entitlements for Heritage Peaks subdivision and will have to reapply for approval for any planned unit development or subdivision under the then current County subdivision ordinance.

Section 8—Request for Additional Phases. Any request to the County for additional phase(s) shall be made at the same time the application is made for the final plat.

Section 9—Extensions of Time. The Developer may be allowed extensions of time for commencement of construction, or for beyond the completion date, for unavoidable delays other than those caused by strikes, lockouts, acts of God, or factors beyond the control of the Developer. Application for extension shall be made on the Teton County "Development Agreement Extension Application" and shall address the criteria presented on that form and in Exhibit C, Extension Criteria. The Developer shall pay the fee associated with the request. Developer acknowledges and agrees that the Board of County Commissioners has the sole discretion to grant or deny a request for extension.

Section 10—Estimated Construction Dates. The Developer reserves the right to commence construction of the Improvements any time after recording of the final plat, if weather conditions permit, and the obtaining of the financial security guarantee set forth in Section 19 hereof. It is estimated that the subdivision Improvements will be completed within 24 months after construction begins. The Developer will be solely and fully

responsible for the supervision of sub-contractors and timely completion of installation of the Improvements detailed in Exhibit B and the recorded Improvement plans. Phases of the Development will be constructed and completed no later than as shown below:

Section 11—Control of trash, weeds, dust, erosion, and sedimentation. The Developer shall be fully responsible for all dust abatement, erosion, sedimentation, weed, and trash control on the Property. Developer shall use best management practices and industry standards for control. Trash shall be contained at all times. Dumpsters and sanitary facilities are required on site during every phase of construction. Final remaining escrowed funds shall not be released until all onsite trash is removed, construction rubble is leveled, lost soils are replaced, and disturbed areas are reseeded with native vegetation or planned landscaping. The responsibilities in this Section shall run with the land and they shall therefore apply before, during, and until completion of Improvements.

Section 12—Permits. The Developer is responsible for obtaining all right-of-way, access, excavation, and other permits and approvals required by local, State, and Federal regulations.

Section 13—Inspections. Prior to construction of the Improvements, Developer shall have a pre-construction meeting with Teton County Planning and Engineering representatives, the Fire Marshal for the Teton County Fire Protection District, and the Developer's engineer and contractor. The Developer's engineer shall make regular inspections and maintain control of the Development while it is under construction. Representatives of the County shall have the right to enter upon the Property at any reasonable time to inspect and to determine whether the Developer is in compliance with this Agreement. The Developer shall permit the County and its representatives to enter upon and inspect the Property at reasonable times. The Developer will not materially deviate from the recorded Improvement Plans without the prior written approval of the County Engineer, which approval will not be unreasonably withheld.

Section 14—Inspection Fees. No inspection fees are required by Teton County.

Section 15—Final Inspection and Approval of Improvements. The Developer shall notify the County when it believes that the Improvements have been fully and properly completed and shall request final inspection and approval and acceptance of the Improvements by the County. The County will provide prompt interim and final inspection of the Improvements when notified by the Developer of completion. Developer must provide a signed and sealed letter from an engineer stating the roads have been built in accordance with the submitted road plans and meet or exceed county standard. In addition to the roads, the signed and sealed letter from the engineer shall certify that all Improvements are 100% completed according to Exhibit B and the recorded Improvement Plans. Upon inspection, the county shall give timely written acceptance of the Improvements or a written checklist of material deficiencies, such noted deficiencies shall be specific as to location and shall specify, in detail, the necessary corrective action to be taken by the Developer. Upon approval of the final inspection, the county shall give express written acceptance of the Improvements.

Section 16—As Constructed Plans. Prior to County inspection and approval of the Improvements in the Development, the Developer will file signed and sealed "As Constructed" Improvement Plans with the County Engineer, along with a letter of certification from a licensed engineer as to the accuracy of the corrected plans. Such "As Constructed" Improvement Plans shall show actual constructed location of all required

Improvements.

Section 17—Warranty of the Improvements. The Developer warrants the prompt and satisfactory correction of all defects and deficiencies, for both materials and workmanship, in the Improvements that occur or become evident within two years for all open space and landscaping Improvements and one year for all other Improvements after acceptance of the Improvements by the County. If such defect or deficiency occurs or becomes evident during such period, then the Developer shall, within thirty (30) days after written demand by the County to do so, correct it or cause it to be corrected. If the defect or deficiency cannot be reasonably corrected within thirty (30) days after written demand from the County, the Developer shall commence the correction of the deficiency within the thirty (30) day period and proceed with reasonable diligence to correct the same or cause it to be corrected. The warranty provided by this Section shall be extended for a full year from the date of repair or replacement of any Improvements repaired or replaced pursuant to such demand.

Section 18—Financial Security Guarantee. In lieu of construction of the Improvements by the Developer during the period after County approval of the final plat and the final plat being recorded for each phase, as security to the County for the performance by the Developer of its obligations to complete the Improvements in accordance with this Agreement, the Developer shall, prior to the commencement of construction of any Improvements, obtain financial security in one of the following three methods, in the sum of one hundred and twenty-five (125%) of the engineer's estimated costs for all Improvements, which engineer's cost estimate shall be revised and updated within ninety (90) days of securing the financial guarantee described in this Section: 1. Obtain from a County approved financial institution or approved private financier an irrevocable 12-month letter of credit with guaranteed 6 to 12 month extensions as needed until the public Improvements are completed and accepted by the County; 2. Deposit into a Teton County escrow account funds in the form of a certified check or cash available for disbursement upon signatures by the Developer and Teton County. The county shall retain any interest accrued. 3. Obtain a negotiable construction or development bond from a County approved bonding company for the estimated length of time to fully complete the Improvements including acceptance by the County. The amount of the escrowed funds shall be released for the completed and approved portion of the scheduled Improvements on the subject Property by line item as described on the engineer's cost estimate in Exhibit B. If the County releases a portion of the escrowed funds, the County shall retain twenty five percent (25%) of the original escrowed amount. The Developer shall be limited to three partial releases of escrow per phase. Any amount of the escrowed funds remaining in letter of credit, escrow account, or bond shall not be released until one hundred percent (100%) complete installation and approval of all County required Improvements, including signage and the successful completion of all warranty periods. Ten (10) percent of the original approved engineer's cost estimate for the Improvements shall be provided in one of the three methods presented above in this Section for the entire warranty period described in Section 18 to guarantee the correction of any defects or deficiencies.

Section 19—Remedies. In the event the Developer fails to perform any of the terms, conditions or obligations in this Agreement or has not resolved a defect or deficiency under this Agreement, the County, at its option, may exercise any rights and remedies it may have under law. Furthermore, the County reserves the right, in its absolute discretion, to revoke the Developer's entitlements for Heritage Peaks subdivision and after such revocation, if

Developer chooses to move forward, Developer will have to reapply for approval under the then current County ordinances. Teton County may impose penalties on the Developer in the form of monetary fines, not to exceed the outstanding balance of work not performed or carried out at the scheduled completion date or not to exceed the work to correct the defect or deficiency. The County may withhold the issuance of any building permit or certificate of occupancy for any structure located in the Development, refuse to accept ownership and maintenance of any County Improvements and record a notice of such action in the Teton County Clerk and Recorder's Office, or issue a "stop work" or "cease and desist" order for any building or Improvement under construction in the Development. All of the above remedies are cumulative and to the extent not wholly inconsistent with each other, may be enforced simultaneously or separately, at the sole discretion of the County.

Section 20—Voided Agreement. The County, at its option, may void this Agreement and any vested right should the Developer's failure to perform in compliance with this Agreement results in the County seizing the escrow to complete the Infrastructure or correct the defect or deficiency.

Section 21—Default. If the Developer defaults or fails to fully perform any of its obligations in accordance with this Agreement, or fails or refuses to correct any defect or deficiency in the Improvements required by this Agreement, Teton County shall inform the Developer in writing of the specific default or failing. If the default or failing continues for thirty (30) days after such written notice and the Developer makes no attempt to remedy the default, Teton County shall have, in addition to all of its other rights under the law, the right to complete the construction of the Improvement(s) or to correct the defect or deficiency, using either its own forces or contractors hired for that purpose. The County shall have the right to draw from either/or the financial security guarantee escrow account or credit line provided, those sums not to exceed 125% of the engineer's estimate for individual Improvements installed. Included in the costs of the work, the County is entitled reasonable legal fees and reasonable administrative expenses.

Section 22—Transfer of Lots or Units. No lots or units may be offered for sale or sold (warranty deeds transferred) prior to final plat approval and recording and the obtaining of the required financial security guarantee described in Section 19 for the construction and completion of Improvements. The fire protection, including all weather road(s), shall be operational per the Fire District's inspection and written approval, and street signs installed, before any building permit shall be issued by the County. Furthermore, no certificate of occupancy for residential units shall be given until all Improvements have been completed and accepted in writing by the County. Appropriate easements, covenants and deed restrictions regulating the open space portions of the Developer's lots, consistent with the open space regulations contained in the Teton County Subdivision Ordinance (Title 9) will be promulgated by the Developer and binding upon all lot owners. Developer does hereby agree that all unsold lots shall be maintained by the Developer at the Developer's sole expense, and this responsibility shall run into perpetuity.

Section 23—Time of the Essence. Time is of the essence in the performance of all terms and provisions of this Agreement.

Section 24—Binding Upon Successors. This Agreement shall be binding upon and inure to the benefit of the parties' respective heirs, successors, assigns and personal representatives,

including County's corporate authorities and their successors in office. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefited and bound by the conditions and restrictions herein expressed.

Section 25—Notices. All notices in connection with this Agreement shall be in writing and shall be deemed delivered to the addressee when delivered in person on a business day at the address set forth below or on the third day after being deposited in the United States mail, for delivery by properly addressed, postage prepaid, certified or registered mail, return receipt requested, to the address set forth below.

Notices to the County shall be addressed to, or delivered at, the following address:

Teton County Board of County Commissioners
ATTN: Planning Administrator
89 N. Main Street
Driggs, Idaho 83422

Notices to the Developer shall be addressed to, or delivered at, the following address:

D&R ROBERTS FAMILY LIMITED PARTNERSHIP
352 W 500 N
Tetonia, ID 83452

By notice complying with the requirements of this Section, each party shall have the right to change the address for all future notices, but no notice of a change of address shall be effective until received as provided above.

Section 26—Enforcement. The parties may, in law or in equity, by suit, action, mandamus, or any other proceeding, without limitation enforce or compel the performance of this Agreement.

Section 27—Indemnification.

A. No Liability for County Approval. The Developer acknowledges and agrees (1) that the County is not, and shall not be, in any way liable for any damages or injuries that may be sustained as the result of the County's issuance of any approvals or acceptances of the Improvements or use of any portion of the Improvements, and (2) that the County's issuance of any approvals or acceptances does not, and shall not, in any way be deemed to insure the Developer, or any of its heirs, successors, assigns, tenants, or licensees or any third party, against damage or injury of any kind at any time.

B. Indemnification. Except as provided below, the Developer agrees to, and does hereby, indemnify the County, and all of its elected and appointed officials, officers, employees, agents and representatives from any and all claims, costs and liability of every kind and nature that may be asserted at any time against any such parties for injury or damage received or sustained by any person or entity in connection with (1) the County's review and approval of any plans for the Improvements, (2) the issuance of any approval or acceptance of Improvements, (3) the development, construction, maintenance or use of any portion of the

Improvements and (4) the performance by the Developer of its obligations under this Agreement and all related Agreements. The Developer further agrees to aid and defend the County in the event that the County is named as a defendant in an action concerning the Improvements provided by this Agreement only as to Improvements that are not in conformance with the approved and recorded Master Plan of Heritage Peaks subdivision in compliance with each phase, except where such suit is brought by the Developer. The Developer is not an agent or employee of the County.

Section 28—Amendments or Alterations. All changes, amendments, omissions, or additions to this Agreement shall be in writing and shall be signed by both parties.

Section 29—Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were omitted.

Section 30—Filing. The County shall have this Agreement recorded in the office of the Teton County Clerk and Recorder at the same time as the final plat is recorded. The Developer shall reimburse the County for any recording fees associated with this Development.

Section 31—No Conflicts. The County and the Developer hereby acknowledge and agree that all required notices, meetings and hearings have been properly given and held by the County with respect to the approval of this Agreement. The County and the Developer also acknowledge and agree that this Agreement is supported by Title 9 of Teton County Code. The County and the Developer agree not to challenge this Agreement or any of the obligations created by it on the grounds of any procedural infirmity or any denial of any procedural right.

Section 32—Authority to Execute. The County hereby warrants and represents to the Developer that the persons executing this Agreement on its behalf have been properly authorized to do so by the Board of County Commissioners. The Developer hereby warrants and represents to the County (1) that it is the record owner of fee simple title to the subdivision, (2) that it has the right, power, and authority to enter into this Agreement and to agree to the terms, provisions, and conditions set forth herein and to bind the subdivision as set forth herein, (3) that all legal action needed to authorize the execution, delivery, and performance of this Agreement have been taken, and (4) that neither the execution of this Agreement nor the performance of the obligations assumed by the Developer hereunder will (i) result in a breach or default under any Agreement to which the Developer is a party or to which it or the subdivision is bound or (ii) violate any statute, law restriction, court order, or Agreement to which the Developer or the subdivision is subject.

Section 33—Codes. The Developer agrees to abide by all ordinances, regulations, and codes of Teton County and those of the special purpose districts providing service to the Development.

Section 34—Governing Law. This Agreement shall be construed and governed according to the laws of the State of Idaho. The venue for any action arising out of this Agreement shall be exclusively in the District Court of the Seventh Judicial District of the State of Idaho, Teton County, or in the United States District Court for the District of Idaho.

Section 35—Attorney's Fees. Should any litigation be commenced between the parties concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorney's fees as determined by a court of competent jurisdiction.

Section 36—Final Agreement. This Agreement sets forth all promises, inducements, agreements, condition and understandings between Owner/Developer and County relative to the subject matter hereof, and there are no promises, agreements, conditions or understanding, either oral or written, express or implied, between Owner/Developer and County, other than as are stated herein. All Exhibits referenced herein are incorporated in this Agreement as if set forth in full including all text information in the Exhibits. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by them or their successors in interest or their assigns, and pursuant, with respect to County, to a duly adopted ordinance or resolution of County.

Section 37—No Waiver of County Rights. No waiver of any provision of this Agreement will be deemed to constitute a waiver of any other provision nor will it be deemed to constitute a continuity waiver unless expressly provided for; nor will the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The County's failure to exercise any obligation under this Agreement will not constitute the approval of any wrongful act by the Developer or the acceptance of any Improvement. Developer acknowledges that Teton County reserves the right to revoke all approvals for Heritage Peaks subdivision upon failure to comply with the conditions of approval of Final Plat, upon any of the violations of Teton County Title 9, or for misrepresentations or material omissions made to the Teton County Planning Commission or Board of County Commissioners.

Section 38—Mitigation of Teton County Road Improvements. Upon the final approval of Heritage Peaks subdivision by Teton County and the issuance of the first building permit for such subdivision, the Developer will make a donation to Teton County in the amount of \$_____ to be designated for road Improvements to (road name)_____.

Section 39—Community Enhancements. The Developer hereby pledges \$_____ from the proceeds of each lot closing in Heritage Peaks subdivision. The Developer desires \$_____ to go to _____, \$_____ to go to _____, and \$_____ to go to _____. These contributions are being given on a voluntary basis and will be donated as follows: Funds will be collected at the closing of the initial sale of each lot sold by the Developer; The Developer will record an Agreement placing a lien on the lots such that the collection of these funds will be facilitated by the title company handling the closing of such lots.

Section 40—Sharing Development Costs. Teton County Subdivision Regulations, Title 9, provides the Developer a mechanism to recoup a portion of certain costs associated with Improvements made by the Developer. All shared development rights afforded the Developer under Title 9 and this Agreement, in particular Section 7, are hereby retained; any other Agreement, document, or statement by the Developer shall not be deemed to waive any rights afforded the Developer under Teton County Title 9.

Section 41—Effective Date. This Agreement shall become valid and binding only upon its approval by the Teton County Board of County Commissioners and its recording in the Teton County Clerk and Records Office; and it shall be effective on the date first written above. IN WITNESS WHEREOF, the parties have hereunto set their hands as of the date first above written.

Agreed:

BOARD OF COUNTY COMMISSIONERS, TETON COUNTY, IDAHO

Larry Young, Chairman

STATE OF IDAHO)
) ss:
COUNTY OF TETON)

On this ____ day of _____, 20__, before me, a Notary Public for the State of Idaho, personally appeared Larry Young, Chairman, known to me to be the person(s) whose name(s) is executed above, and acknowledged that he executed the same.

(SEAL)

Notary Public
Residing _____
Commission expires _____

Reg Roberts

STATE OF _____)
) ss:
COUNTY OF _____)

On this _____ day of _____, 2010, before me, a Notary Public for the State of _____, personally appeared _____ known to me to be the person(s) whose name(s) is executed above, and acknowledged that he executed the same.

(SEAL)

Notary Public
Residing _____
Commission expires _____

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

EXHIBIT B
ENGINEER'S COST ESTIMATE

AW Engineering

Box 139, Victor, Idaho 83455

Phone 208-787-2952 Fax 208-787-2957

Aug 4, 2010

EXHIBIT "B"

Engineer's Final Cost Estimate

Heritage Peaks Subdivision

Section 34, Township 6 N, Range 45 E. B. M., Teton County, Idaho

	DESCRIPTION	COST/UNIT	UNITS	COST
1	Electric power service Installed 2008	\$7.00/l.f.	800 l.f. (In)	0
2	Telephone service Installed 2008	\$4.00/l.f.	800 l.f. (In)	\$ 0
3a	Road system: 24' wide base gravel road Base grave exists on 18' wide road Cost estimate	\$3.50/l.f.	800	\$ 2,800
3b	4" Crushed Gravel on 12' wide x 820'	5.00 / lf	800 lf	4,000
4	Fire System for Project	None	0	0
5	Entrance Sign	1200	1	1,200
6	Landscaping around entrance area	1000	1 area	1,000
7	Mail boxes private Boxes Not Sub project	None	0	0
		TOTAL:		\$ 9,000

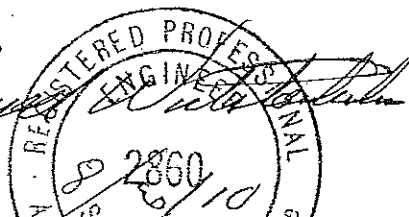
PROJECT TOTAL ENGINEER'S ESTIMATED COST \$ 9,000

Planning & Zoning requirement of 125% = \$ 11,250.00

This plan and proposal does not include central water or sewer systems and it is not expected to be required by Teton County.

The road plan and costs are for a 4" x 24 feet wide crushed gravel road surface which meets county specifications.

Arnold Woolstenhulme



**DECLARATIONS OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE PEAKS SUBDIVISION**

This is a Declaration of Covenants, Conditions and Restrictions regulating and controlling the use and development of real property, made effective this ____ day of September 2010, by D&R ROBERTS FAMILY LIMITED PARTNERSHIP, Declarant.

1. **Purpose.** Declarant is the owner of that certain real property located in Teton County, Idaho, which property is more particularly described in Exhibit A attached hereto and made part hereof, and which is hereinafter referred to as the Property. The Declarant is adopting the following covenants, conditions and restrictions to preserve and maintain the natural character and value of the property for the benefit of all owners of the property or any part thereof.

2. **Declaration.** Declarant hereby declares that the property described in Exhibit A attached hereto, and any part thereof, shall be owned, sold, conveyed, encumbered, leased, used, occupied and developed subject to the following covenants, conditions, and restrictions, which are sometimes referred to hereinafter as the "Covenants". The covenants shall run with the property and any lot thereof, and shall be binding upon all parties having acquiring any legal or equitable interest of every owner of any part of this property, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

3. **Definitions.** The following terms and phrases used in these covenants shall be defined as follows:

A. **Common Area** - shall include the common road, shared access, entry gate, entry-landscaping area, and any area designated as "open space" of Heritage Peaks subdivision and the recorded plat thereof.

B. **Common Services** - shall mean the roadway maintenance, snow removal services, irrigation system maintenance, utility lines maintenance and/or repair services for the Common Road and Shared Access Road and the utility lines located in the right-of-ways of such roads and cable television lines at such time as they become available. Utility lines shall include all electric, telephone, irrigation, and cable television.

C. **Committee** - shall mean the management committee responsible for the administration and enforcement of these covenants and conditions.

D. **Declarant** - shall mean and refer to Reginald Roberts, his successors and assigns or heirs.

E. **Development** - shall mean any alteration of the natural land surface, and

all buildings, structures or other site improvements placed on the land to accommodate the use of a lot.

F. Lot - shall mean and refer to any plot of land shown upon the recorded plat map hereinafter referred to as Heritage Peaks recorded by Reginald Roberts on the ____ day of September, 2010.

H. Owner - shall mean the recorded owner of a lot, including a contract purchaser, but excluding anyone having an interest in a lot as security for the performance of an obligation.

I. Principal Residence - shall mean the single-family residential structure, constructed on any lot of the property, which is the principal use of such lot, and to which other authorized structures on such lot are necessary.

4. Association Membership. Every owner of a lot within Heritage Peaks subdivision shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot that is subject to assessment.

5. Voting Rights. The Association shall have one class of voting membership. Members shall all be lot owners and shall be entitled to one vote for each lot owned.

6. Meetings. As the original developer and owner of the subdivision, Reginald Roberts shall act as the Chairperson of the owners association and remain as such until such time as the Declarant completely divests itself of ownership of the subdivision. At such time as the Declarant completely divests itself from ownership of the subdivision, a representative from each lot owner within the subdivision shall rotate the responsibility of acting Chairperson every two years. The Chairperson shall call and conduct an annual meeting of lot owners, and shall meet from time to time as necessary to administer and enforce these covenants. Written notice of any meeting shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. Notice may be given by U.S. mail, email, or fax. The lot owners of both lots must be present in person or via telephone to continue any meeting. The owners through the purchase of their lots agree to serve on the Committee. The Committee shall adopt such rules for the conduct of its business as are appropriate, including designation of officers and procedure for annual meetings of lot owners.

7. Committee. The Committee, until one of the lots is sold to a party other than declarant, shall consist of the Declarant. Upon the sale one of the lots, the owners shall hold a special meeting to designate a representative from each lot owner to act as the Committee. The then existing Committee shall function until new representatives are designated by the respective lot owners and the representatives assume their respective positions. Newly designated representatives of the respective lot owners shall fill vacancies in the Committee caused by death, resignation or inability to act. All Committee members shall be owners of lots within the Heritage Peaks. The Committee shall consist of two (2) members.

8. **Building Permit.** No building, fence, or other improvement, shall be constructed, erected, or maintained on any lot or tract, nor shall any addition thereto, or alteration therein be made until the ideas, plans, and specification, shall have been submitted to the Committee for comments. Comments of representatives of the Committee are not binding on the lot owner.

10. **Development and Land Use Restrictions.** All development and use shall conform to the following requirements:

A. "Night Sky" Lighting and County land use regulations - Conformity with any and all applicable land use regulations of Teton County shall be required, in addition to the requirements of these covenants. In case of any conflict, the more stringent requirements shall govern. Specifically, all lighting is to be shielded and confined with property lines in accordance with Teton County "Night Sky" zoning ordinance 9-4-12.

B. Residential Use - All lots and tracts are hereby restricted in use for residential purpose only, and neither the premises, nor any improvements thereon shall be used for any commercial, industrial, public, illegal or immoral purposes and no nuisance shall be maintained or permitted to exist thereon. Home offices and/or private music or art lessons are allowed if they do not create an amount of traffic that would be considered burdensome by a reasonable and prudent neighbor. No parking shall be allowed at any time on the common roads within the development due to fire protection and snow removal requirements.

C. Construction - All construction and alteration shall comply with provisions of the Teton County, Idaho, building, health, and safety codes as may be applicable to the subdivision. All construction shall comply with the following minimum construction standards:

i. Set backs. All residences with minimum set backs of 30 feet in the front, 30 feet at the sides and 40 feet in the rear of all Lots.

ii. Landscaping. Landscaping irrigation by well water shall be limited to .5 (1/2) acre. Landscaping is measured from structure, walks, driveways, or apparatus, whichever is greater. Irrigation water from the appurtenant water rights of the subdivision will be shared equally between both lot owners with preference given to irrigation of pastures first, open space second, and private lots third.

iii. Type and Character of Design. All construction shall be of custom quality. "Manufactured" homes will not be permitted. Wood shall be the dominant theme. All barn structures shall have wood/rock exteriors. All exterior colors, textures and materials, including roof materials, must be non-reflective.

- iv. Residence Size Requirements. No primary residence shall be erected on any Lot having total floor area of the main structure, exclusive of open porches, garages, patios, exterior stairways and landings, of less than 2,000 square feet. In the event a residence has more than one story, the ground floor area shall have at least 1,000 square feet. No guest home shall be erected on any Lot having a total floor area of the main structure, exclusive of open porches, garages, patios, exterior stairways and landings, of less than 800 square feet.

D. Utilities - Electrical and telephone lines have been installed underground along the roadway and across the roadway. Connections from the lots within the property to the underground utility lines shall be completed at the lot owners expense and shall be underground.

E. Temporary Structure Prohibited - No temporary structures, such as trailers, tents, shacks or other similar buildings shall be permitted on any lot, except during construction as authorized by the both representatives of the Committee. No boat, travel trailer, recreational vehicle, motor home, camper or similar vehicle shall be allowed or stored on any lot unless it is appropriately garaged or appropriately screened. No travel-trailers, boats, tents, temporary structures or like improvements shall be used as a residence in the Development at any time, except for temporary guests who stay no longer than two weeks.

F. Maintenance - Each lot and all improvements thereon shall be maintained in clean, safe and slightly condition. Boats, motors, tractors, vehicles other than automobiles and pickups, campers when off the truck, snow removal equipment, and garden or maintenance equipment or parts thereof shall be kept at all times except when in actual use within an enclosed or appropriately screened structure. Refuse, garbage and trash shall be kept at all times in a covered container, and any such container shall be kept within an enclosed structure or appropriately screened from view. Service areas, storage piles, compost piles and facilities for hanging, drying or airing clothing or household fabrics shall be appropriately screened from view. No lumber, grass, shrub or tree clippings or plant waste, metals, bulk materials, or scraps or refuse or trash shall be kept, stored or allowed to accumulate on any lot except as appropriately screened from view. Lots shall be mowed regularly. Noxious weeds must be kept under control at all times at the expense of the owner, and lots should not be left in an uncared for condition. Failure of any lot owner to control weeds on his lot, properly contain garbage or reasonably mow his law shall result in the other lot owner correcting the situation and assessing the offending lot owner for the expense incurred.

G. Noxious or Offensive Activities - No noxious or offensive activity shall be carried out upon any lot, nor shall anything be done or placed thereon which may be or become a nuisance, or cause unreasonable embarrassment, disturbance or annoyance to other owners in the enjoyment of their lots, or in their use of the

shared use areas. In determining whether there has been a violation of this paragraph recognition must be given to the premise that owners, by virtue of their interest and participation in this development, are entitled to the reasonable enjoyment of the natural benefits and surroundings of said development.

H. Water System - Each structure designed for occupancy or use by human beings, shall be connected to a private water supply system at the owners expense. Such water system shall conform to the standards applicable for the area, including, without being limited to, the Idaho State Public Health Department.

I. Waste Disposal - Each structure designed for occupancy or used by human beings, shall be connected to a private, individual waste disposal system at the owners expense. Such waste disposal system shall conform to the standards applicable for the area, including without being limited to, the Idaho State Public Health Department. No outdoor toilets shall be permitted, except during construction. It must be of a storage type and be serviced on a need basis.

J. Excavation and Mining - No excavation for stone, sand, gravel or earth shall be made on any lot, except for such excavation as may be necessary in connection with the erection of an improvement thereon. No quarrying, or mining operations of any kind, shall be permitted on any lot.

K. Livestock Pets - No livestock or pets shall be kept or maintained on any lot except as provided herein.

i. No domestic animal or fowl shall be maintained on any pasture or open space lot unless approved by the owners of both lots. Not more than two generally recognized house or yard pets will be allowed per lot owner, provided, however, that such animals shall at all times be restrained or leashed within the lot. Said house or yard pets shall not cause a nuisance to neighboring lot owners or harass or endanger wildlife or livestock and any that are not will be impounded by Teton County or by the Committee employees at the owners expense

ii. All horses or livestock will be kept in appropriately designated open space pursuant to the mutual consent of both lot owners.

L. Wildlife Protection - No activity shall be allowed on any lot that disturbs or harasses wildlife. No hunting shall be allowed on any lot, pasture, or open space except by mutual consent of both lot owners.

M. Snowmobiles and Motorcycles - Snowmobiles, four-wheelers, and motorcycles, shall in no way be used in such a manner as to infringe on the quiet enjoyment of others within the development.

N. Easements - there are, hereby, reserved for the purpose of installing and maintaining utility facilities, for such other purposes incidental to the development of the property, the easements shown on the plat of the property.

O. Private Roads - the roads within the subdivision are private and accessible to the public only in accordance with the provisions listed on the record plat of the development. The Association is solely responsible for the maintenance, upkeep, and clearing of the roads within the subdivision.

P. Further Development - no further subdivision of individual lots within subdivision is allowed.

11. **Duties of Committee.** The Committee shall contract for snow removal and periodic maintenance services on the shared portion of the access road, entry gate and surrounding landscape area, and development boundary line fences costs. The Committee shall prepare an annual budget estimate for membership approval and submit annual statements to each lot owner based upon its estimate. Lot owners shall pay billing for common services within thirty days of the billing date. Each lot owner will be responsible for and billed for their respective share of the cost of the contract services as previously listed in this paragraph herein. In the event that the estimate of the Committee is less than the actual common service costs, the Committee shall send billings to each lot owner in accordance with the proportionate shares set forth in this paragraph after the Committee's funds for common services have been expended, with an estimate for common services for the remainder of the year based upon the actual expenses incurred by the Committee. Additional billings shall be paid by lot owners within thirty days of the billing date. The initial assessment for common services will be \$500 bi-annually and will commence from and after _____.

A. Special Assessments - Upon mutual approval of the lot owners the Committee shall have authority to establish special assessments to meet emergency or unusual conditions that have arisen with regard to the access facilities or utilities which service the property. Special assessments shall be allocated in accordance with the formula set forth for common services, and shall be payable within thirty days of the billing date. Any assessment not paid within thirty days after the due date shall bear interest from the due date at the rate of ten percent per annum. The non-offending lot owner may bring an action at law against the owner personally obligated to pay the same. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any lot shall not affect the assessment lien.

B. Limitation of Liability - Neither the Committee nor any member thereof shall be liable to any party for any action or inaction with respect to any provision of these covenants, provided that such Committee or member thereof has acted in good faith.

12. **Violations, Enforcement, Liens, Costs.** The limitations and requirements for

land use and development set forth in these covenants shall be enforceable by any owner of a lot within the property, or its successor in interest as owner of the real property. Every owner of a lot within the property hereby consents to the entry of an injunction against him or her or his or her tenants or guests, to terminate and restrain any violation of these covenants. Any lot owner who uses or allows his or her lot to be used or developed in violation of these covenants further agrees to pay all costs incurred by the other lot owners in enforcing these covenants, including reasonable attorney's fees. The Committee shall have a lien against each lot and the improvements thereon to secure the payment of any billing for common services, special assessments, or penalty due to the Committee from the owner of such property which is not paid within the time provided by these covenants, plus interest from the date of demand for payment at the rate of ten percent per annum. The Committee is authorized to record a notice of lien in the office of County Clerk of Teton County, Idaho, which shall include a description of the property and the name of the owner thereof and the basis for the amount of the line. A copy of the notice of the lien as filed in the County Clerk's office shall be sent to the owner by certified or registered mail. Any such lien may be foreclosed in the manner provided for foreclosures of mortgages by the statutes of the State of Idaho. In addition to the principal amount of the lien plus interest, the Committee shall be entitled to the payment of all costs incurred in the establishment or enforcement of any lien, including filing costs and attorney's fees.

13. **Amendment.** These covenants may be amended by the written consent of all of the lot owners within the property.

14. **Duration of the Covenants.** All of the covenants, conditions and restrictions set forth herein shall continue and remain in full force and effect at all times against the property and the owners and purchasers or any portion thereof, subject to the right of amendment as set forth in Article 13 thereof. If required by law these covenants shall be deemed to automatically renew themselves at twenty-year intervals, unless all of the lot owners agree otherwise in writing.

15. **Severability.** Any decision by a Court of competent jurisdiction invalidating any part or paragraph of these covenants shall be limited to the part or paragraph affected by the decision of the Court, and the remaining paragraphs and the covenants, conditions and restrictions therein shall remain in full force and effect.

16. **Acceptance of Covenants.** Every owner or purchaser of a lot within the property shall be bound by and subject to all of the provisions of this declaration, and every lot owner or purchaser through his or her purchase or ownership expressly accepts and consents to the operation and enforcement of all of the provisions of this declaration.

17. **Agricultural Rights.** All potential lot owners are put on notice that there are existing agricultural operations within the neighboring areas and they are protected by Idaho's Right-to-Farm Act. Noise, odors and movements of farm machinery are recognized by lot owners as inherent activities accompanying farming and ranching operations. (See attached Exhibit B Idaho Statutes 22-45-1, 22-4502, 22-4503, and 22-

4504).

In witness whereof, Declarant has executed this declaration effective the day and year first set forth above.

Reginald Roberts, Partner
D&R ROBERTS FAMILY LIMITED
PARTNERSHIP

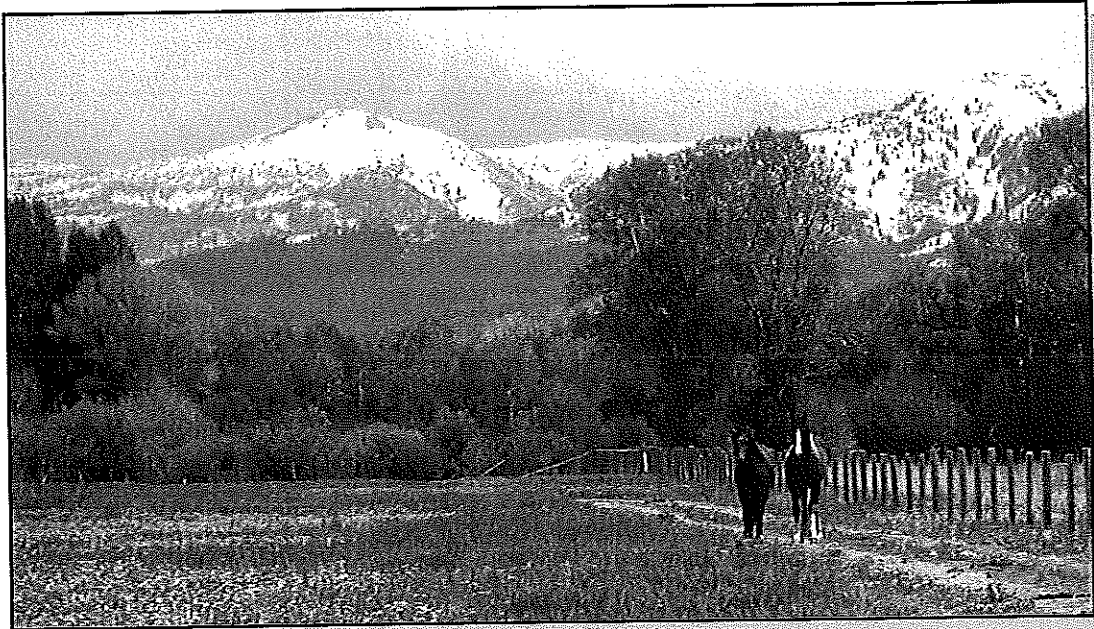
STATE OF IDAHO)
 : ss.
County of Teton)

The foregoing instrument was acknowledged before me by Reginald Roberts this ____
day of _____, 2010.

Witness my hand and official seal.

Notary Public for Idaho
Residing at:
My Commission Expires:

LEVEL I NUTRIENT/PATHOGEN EVALUATION ADDENDUM FOR HERITAGE PEAKS SUBDIVISION



Prepared for:

D&R Roberts Family Limited Partnership

PO Box 417, Driggs, ID 83422

t: 307-690-1638

Project #10012-133-1



HARMONY
DESIGN & ENGINEERING

110 E. Little Avenue, PO Box 369

Driggs, ID 83422

T: 208-354-1331 F: 208-354-1332

July 5, 2010

TABLE OF CONTENTS

TABLE OF CONTENTS	1
1. INTRODUCTION	1
1.1. BACKGROUND	1
1.2. EXISTING CONDITIONS.....	2
1.3. PROPOSED PROJECT	4
2. FIELD INVESTIGATION.....	6
2.1 WATER SAMPLING AND SOIL BORINGS	6
2.1. PATHOGEN TRANSPORT	7
2.3. PHOSPHOROUS TRANSPORT	7
2.4. NITROGEN TRANSPORT	9
3. ANALYSIS & RESULTS	10
3.1. SOILS & HYDROLOGIC FIELD INVESTIGATION	10
3.2. PATHOGEN TRANSPORT ANALYSIS	15
3.3. PHOSPHOROUS TRANSPORT ANALYSIS	15
3.4. NITROGEN TRANSPORT ANALYSIS	16
4. CONCLUSIONS	17
5. RECOMMENDATIONS	18
6. REFERENCES	22
APPENDIX A – FIELD INVESTIGATION DATA	
APPENDIX B – PHOSPHOROUS TRANSPORT ANALYSIS	
APPENDIX C – NITROGEN TRANSPORT ANALYSIS	

Full report is
available upon
request to
Planning Dept.

I. INTRODUCTION

I.1. BACKGROUND

A Nutrient Pathogen (NP) Evaluation for the Heritage Peaks Planned Unit Development was prepared by Rocky Mountain Environmental (RME) dated March 4, 2009 and submitted to the Department of Environmental Quality (DEQ) for review. This Level I Nutrient Pathogen (NP) evaluation was conducted for a proposed subdivision that included 4 single family lots which were 1.00 to 1.62 acres in size and 12.33 acres of open space.

In response to the NP Evaluation by RME, comments were provided by DEQ in a letter dated March 25, 2009. Specifically the comments were:

1. The NP Evaluation does not discuss or address the fate transport of pathogens or their effects on ground water.
2. The NP Evaluation does not discuss or address the fate transport of phosphorous to the groundwater or adjacent Spring Creek. It is uncertain whether there exists a connection of ground water (either the shallow perched water (wetlands) or the upper unconfined aquifer) to the surface water of Spring Creek. Spring Creek is not a 303d listed stream and currently has no TMDL and has not been listed as water quality limited, however the USEPA Gold Book (USEPA, 1986) water quality guidelines values for total phosphorous should guide the evaluation if there exists a connectivity of either the shallow perch water or the upper unconfined aquifer to Spring Creek. The US EPA water quality value for phosphorous for streams is 0.100 mg/l.
3. The location and placement of the drain fields will be critical in meeting all of the Technical Guidance Manual (TGM) criteria. The Health District should be consulted for proper location of the drain fields per the TGM for Subsurface Disposal Systems.
4. The individual drain fields should also be modeled to assure compliance to any individual drinking water wells that may be located down gradient of the proposed drain field locations. The wells for lots 3, 4, and 5 are down gradient of the drain fields for lots 4 and 5.
5. The conclusions for the NP report should be more specific in what will actually be proposed as far as the number and size of lots and the level of treatment in order to meet the required limits at the compliance points. The plat should be updated to match the accepted or selected alternative from the NP evaluation.

In February 2010, the subdivision layout was modified and the current layout includes only two lots, 6.05 and 6.01 acres in size, and 6.63 acres of open space. This report has been prepared to respond to the comments made by the DEQ and to update the Level 1 NP Evaluation based on the revised subdivision plan.

phosphate in Spring Creek and will result in less than 1.0 mg/L increase in nitrate concentration in the groundwater at the western property boundary.

Unfortunately, the surface water target total nitrogen concentration of 0.6 mg/L is exceeded in many locations throughout the upper Teton River basin (FTR, 2009). This includes Spring Creek with an estimated total nitrogen concentration of 0 to 0.86 mg/L. Several studies have concluded that the majority of the nitrate pollution in surface waters is due to agriculture impacts. In Teton County approximately 58% of residual nitrogen originates from fertilizers, 19% from cattle manure, 19% from legume crops, less than 5% from precipitation, and less than 1% from domestic septic systems (Rupert, 1996). The impact of the two proposed septic systems on nitrate concentration in both Spring Creek and the Teton River was analyzed using a mass balance approach and the results showed a 0.006 and 0.000 mg/L increase respectively. This increase can be considered negligible compared to the impact of agricultural runoff.

5. RECOMMENDATIONS

Given the presence of wetlands, irrigation canals, intermittent streams, perennial streams, and high groundwater on the project site, it is very important that the septic systems include advanced treatment and are professionally engineered, installed, and properly maintained. Having an adequate unsaturated zone below the septic drain field is critical to ensure that good aeration and slow travel of effluent is achieved through the soil. This is important to achieve adequate decomposition and die-off of pathogens, promote soil based removal of bacteria, and for adequate adsorption of phosphorous. Therefore, we recommend mounded drain field systems, either capping fill trench or sand mounds, and low hydraulic loading rates be used to create an adequate unsaturated zone.

Adequate separation distances and proper well construction is also recommended. For design soil group B-2 the required minimum separation distance from the bottom of the drain field to normal high groundwater is 4 feet and to seasonal high groundwater the minimum distance is 1 foot (DEQ, 2009). Horizontal separation of 200 feet is required between drain fields and permanent or intermittent surface water and a distance of 50 feet is required between drain fields and irrigation canals. Wells must be a minimum of 50 feet from the drain fields and should be constructed with adequate casing and sealing to prevent cross contamination between higher groundwater layers and the water bearing formation.

We recommend the preliminary plat shown in Figure 6 be modified to include drain field and culinary well placements for the two proposed lots as shown in either Figure 11 or Figure 12. The benefit of proposed layout alternative 2 shown in Figure 12 is that no wetlands will need to be disturbed for the installation of the sanitary sewer lines. The drain fields shown in Figures 11 and 12 are preliminary and based on size standards included in the TGM for a 4 bedroom home using 2.5 foot wide trenches.

Teton Basin 2001 to 2009 water quality monitoring program. FTR took samples three to four times each year from eleven monitoring locations in three hydrologic categories which included the main stem of the Teton River, valley-floor tributaries or “spring creeks”, and headwater tributary background sites. Spring Creek at the project site would be expected to have similar characteristics to the five sampled valley-floor tributaries which include Woods Creek, Six Springs, Fish Creek, lower Fox Creek, and Warm Creek. Total nitrate plus nitrite (expressed as nitrogen) values for these five sites showed that measurements taken in June were not consistently lower than measurements taken throughout the rest of the year. Graphs of the FTR data are included in Appendix A.

The standard deviation of the FTR data taken from the valley-floor tributaries was 0.30 to 0.87 mg/L with an average standard deviation of 0.51 mg/L. Although we only have one recent measurement from Spring Creek, we can use the average standard deviation from the valley-floor tributaries to conclude that 68% of the nitrate concentration will range from 0 to 0.86 mg/L assuming that 0.35 mg/L is the average. Using the mass balance approach, the two proposed septic systems would increase the nitrate concentration by 0.006 mg/L to 0.866 mg/L in Spring Creek. The impact to the Teton River was evaluated using the same mass balance approach and using data collected by FTR in August 2003 which had one of the highest background concentrations and lowest stream flow rates. The result is an increase of 0.000 mg/L due to the large dilution effect of the Teton River.

To Groundwater:

The nitrogen mass balance spreadsheet provided by DEQ was used to evaluate the impact of nitrate contamination to the deeper water bearing aquifer. A maximum 1 mg/L increase in nitrate concentration at the point of compliance boundary (the western property line) was considered to be a negligible effect. In order to meet this requirement, both of the proposed home sites will need to use advanced treatment systems which reduce the nitrate concentration in the effluent to 27 mg/L.

Two recommended site layouts were analyzed. The first is similar to the proposed layout shown in Figure 6 with Lot 1 building and drainfield on the western portion of the property (Figure 11). The drawback to this layout is that wetlands will be disturbed in order to install the sewer line from the house to the drain fields. The second alternative is to locate both homes and drain fields on the eastern portion of the site (Figure 12). Both of these alternatives will result in 3.0 mg/L nitrate concentration at the downstream boundary which is meets the 1 mg/L increase.

4. CONCLUSIONS

Phosphorous, nitrate, and pathogen contamination to groundwater and surface water is unlikely if the two proposed septic tanks and drain fields for the Heritage Peaks Subdivision are properly designed, constructed, and maintained. Even if no attenuation or degradation of phosphates and nitrates occurs through the vadose zone, concentrations will not exceed 0.1 mg/L total

The septic systems for the two proposed lots must include extended treatment system that achieve a nitrate concentration in the effluent of 27 mg/L in order for the two proposed to have a negligible effect on downstream nitrate concentration in groundwater. These systems along with the mounded drain fields should be designed by a professional engineer. A representative from the Eastern Idaho Public health department visited the site in 2003 and also recommended extended treatment and engineered sand mound systems.

At this time, we do not feel that further on-site investigation or reporting is necessary.

“Evaluation Criteria Narrative”

for

Heritage Peaks Planned Unit Development

A part of the S ½ NW ¼ of
Section 34, Twp. 6 North, Range 45 East, B.M.,
Teton County, Idaho

OWNER/DEVELOPER:

D & R Roberts Ltd.
PO Box 417
Driggs, ID 83422
(307) 690-1638

ENGINEER:

Arnold W. Woolstenhulme
A-W Engineering
P.O. Box 139
Victor, ID 83455
(208) 787-2952

TABLE OF CONTENTS

<u>PRELIMINARY REPORT</u>	<u>1</u>
<u>1. Introduction</u>	<u>3</u>
<u>2. Analysis of comprehensive plan policies</u>	<u>3</u>
<u>2.1 Property Rights</u>	<u>3</u>
<u>2.2 Population</u>	<u>3</u>
<u>2.3 School Facilities & Transportation</u>	<u>3</u>
<u>2.4 Economic Development</u>	<u>4</u>
<u>2.5 Land Use</u>	<u>4</u>
<u>2.6 Natural Resources</u>	<u>4</u>
<u>2.7 Hazardous Areas</u>	<u>4</u>
<u>2.8 Public Services & Utilities</u>	<u>4</u>
<u>2.9 Transportation</u>	<u>5</u>
<u>2.10 Recreation</u>	<u>5</u>
<u>2.11 Special Areas or Sites</u>	<u>6</u>
<u>2.12 Housing</u>	<u>6</u>
<u>2.13 Community Design</u>	<u>6</u>

1. INTRODUCTION

This report provides the required information to submit the Heritage Peaks Planned Unit Development for the preliminary hearing of the Teton County Planning and Zoning Commission. This report supplements information provided on the preliminary master plat. This development is located in a portion of the S ½ NW ¼ of Section 34, Twp 6 N., Range 45 E., B.M., Teton County, Idaho. The proposed development lies approximately at State Highway 33 and County Road 200 West, Teton, Idaho. The 20.00-acre property will be subdivided into 2 lots, ranging in size from 6.02 to 8.26 acres with a single-family residence proposed for each site. The property is zoned ARR-2.5, and no change to this zoning is proposed.

2.A ANALYSIS OF COMPREHENSIVE PLAN POLICIES

2.1 Property Rights

Policy 1: The developers of Heritage Peaks Planned Unit Development recognize their rights to develop this property via these named constitutional rights and also recognize these development rights are governed by the applicable ordinances of Teton County.

2.2 Population

Policy 1: The Developers of Heritage Peaks Planned Unit development encourage Teton County to continue in this worthwhile endeavor.

2.3 School Facilities & Transportation

Policies 1-4: The target market for this development are single-family homeowners. If each home site in this development is occupied as a primary residence, according to the data received from the Superintendent of District #401, the number of children per household from the last census is .87 students. According to census estimates, this will result in an additional 1.74 children being enrolled in the school district, representing a very slight increase in enrollment. Houses in this part of the valley are traditionally higher end homes that have higher assessment values and therefore generate more taxes. Only the State of Idaho is empowered to change the tax structure.

Transport?

2.4 Economic Development

Policies 1-5: This development conforms to these policies by (1) adding moderate growth to the county; (2) providing commercial support to Grand Targhee ski resort by fostering growth of the local customer base; (3) supporting and balancing growth with the natural assets of the county; (4) providing jobs for the work force in the construction industry by providing work for concrete, framers, carpenters, electricians, painters, lumber yards, and landscaping businesses.

2.5 Land Use

Policies 1-8: This development supports this policy by maintaining and protecting the scenic corridor; (2) concentrating higher-density development with the cities' areas of impact; (3) enhancing the range of housing options available in the county; (4) limiting the commercial development away from the city areas of impact. This is not a high density development nor is there industrial or commercial uses being proposed. Housing options are being met by providing alternatives.

2.6 Natural Resources

- wetlands
- critical overlay

Policies 1-7: As development prices for subdivision prices increase and the cost of agricultural enterprises, including equipment escalates, maintaining agriculture as a way of life is becoming less and less feasible. However, larger lots contribute to a rural sense of community. Outdoor lighting will adhere to Section 9-4-1K, street lighting is not required and is discouraged in areas that are naturally dark; no public lands adjoin this development. There are no known wildlife habitats on this property that was previously formed; weed control is mandated by the CC&Rs.

2.7 Hazardous Areas

Policies 1-3: No known hazardous areas exist on this property; protection from wildfires will be a primary issue for the Homeowners Association.

2.8 Public Services & Utilities

Policies 1-6: 1. Public services With a single-family residence on each lot, this development will generate approximately \$7,200 in property tax revenue each year after build out. The following table breaks this estimated revenue down according to the various county levies.

2. Estimated tax revenue

Number of homes	2	
Estimated value of each home	\$300,000	
Combined value of all homes	\$600,000	
Estimated tax valuation	\$210,675	
Estimated total value	\$421,350	
Levy	Rate	Taxes generated
County general fund	0.001612444	\$679.40
City	N/A	N/A
School District #401	0.004055182	\$1708.65
Cemetery	0.000054257	\$ 22.86
Valley of the Tetons Library	0.000093743	\$ 39.50
County road and bridge	N/A	N/A
Fire district	0.00108373	\$456.63
Total	0.006899356	\$2907.04

Due to the minimal impact of this development on county services and public facilities, no additional financing of services should be required. The additional tax revenue generated by this project should offset any impact to these surfaces. The developers will assume responsibility for maintenance of the subdivision including snow removal, weed control, and road maintenance until the homeowners association can assume control of this responsibility. The homeowners association will assume this responsibility after 50% of the lots have been sold and the governing structure of the association has been established. This maintenance will be funded by monthly dues paid by lot owners. The CCRs of Heritage Peaks Planned Unit Development will establish the organization for this association and specify how dues will be assessed and collected.

2.9 Transportation

Policies 1-4: Heritage Peaks Planned Unit Development recognizes the transportation challenges of Teton County and encourages the county commissioners to adopt a capital improvements plan.

2.10 Recreation

Policies 1-4: Due to its location, Heritage Peaks Planned Unit Development will protect the natural recreational assets of Teton Valley by not hindering public access to or the serene environment of National Forest or Bureau of Land Management lands or the Teton River or other streams.

2.11 Special Areas or Sites

Policy 1: There are no historic sites or buildings will be impacted by this development.

2.12 **Housing**

Policies 1-3: This development conforms to these policies by (1) providing affordable housing opportunities; (2) not creating high-density development away from the cities or their areas of impact.

2.13 **Community Design**

Policies 1-2: The size of lots in Heritage Peaks opens up scenic vistas and views of the Teton Mountain Range with their forested landscapes. Nightskies are protected through strict adherence to Section 9-4-1K; the Outdoor Lighting Ordinance. Because of its location; Heritage Peaks Planned Unit Development does not connect to the Teton Valley Trails and Pathways System



TO: Gerald Williams, P.E.

FROM: Curt Moore- Teton County Planning

DATE: November 5, 2010

RE: Flood Plain Administrator review of Heritage Peaks Subdivision

Enclosed are the relevant application materials for the review of a two lot subdivision on a twenty acres. The project is known as Heritage Peaks Subdivision although this application has been modified over time while retaining the same name. Initially, the proposal was for 9 single-family homes. A Nutrient – Pathogen Evaluation study was required and following those results, the project was reduced o a two-lot proposal.

The property is located in Zone A on FIRM Map Number 16081C0100 C. We believe that no base flood elevations have been established onsite or close-by.

Earlier this week, we discussed on the phone that our County code Title 12 has the language enumerating the 5ac/50 lot threshold for establishing BFE. I included this part of Title 12 below and here is the web link: <http://gis.co.teton.id.us:81/Weblink8/0/doc/113491/Electronic.aspx>. There is an open space lot on this preliminary plat but the coarse mapping of the floodplain extends beyond the proposed open space.

In discussions with the Engineer of Record for the project, the following questions were raised:

1. Does the applicant need to establish the floodplain BFE now at the subdivision stage?
2. Since there are Building Envelopes shown outside of the Zone A, does BFE really need to be established? Can a building permit's Elevation Certificate be accepted without BFE established in a formal way here?
3. Are simplified methods for determining BFE acceptable here?
4. If simplified methods are not acceptable for establishing BFE here, then what detailed methods would be acceptable and what would the minimum detailed method be?
5. Who reviews and approves the BFE once it is completed? FEMA? Floodplain Administrator?
6. Could the applicant voluntarily restrict themselves to an approved house construction method (like slab on grade or building the habitable floor a few feet above grade) and then forego the BFE study?

We would appreciate your review comments, particularly as they may relate to the questions above.

Teton County, Idaho Planning and Building Department
150 Courthouse Drive, Room 107, Driggs, ID 83422
Telephone: 208-354-2593 • Fax: 208-354-8778
E-mail address: pnickell@co.teton.id.us or pzadmin@co.teton.id.us



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.
Serving the Rocky Mountain Region Since 1992

November 11, 2010

Curt Moore, Planner
Teton County Planning
Sent via E-mail

Re: Response to November 5, 2010 Letter regarding Heritage Peaks Subdivision

Dear Curt:

This letter is sent in response to the aforementioned letter. You asked a number of questions or sets of questions, numbered one through six. My responses are numbered to correspond with the questions.

1. *Does the applicant need to establish the floodplain BFE now at the subdivision stage?* Now. Besides being more cost effective to determine the BFE for both lots together rather than each separately, which cost savings is not a factor in regulation or this answer, it is important that the County in its administration of the floodplain understands the actual floodplain impacts prior to subdivision final approval, and also that all property purchasers have full understanding and disclosure regarding the effects of the floodplain in advance of lot purchase and building design. The County floodplain ordinance can be no less stringent than FEMA requirements, which are straightforward on this matter as previously submitted to you. The BFE must be established as part of the subdivision process, and not left to the building permit stage. This was discussed before with Patrick Vaile, who agreed that in the future, which at the time was after The Roost Subdivision, that going forward this would not only be the regulatory approach but also appropriately Teton County's administrative approach. It would probably be well to have that word get out to the planning, engineering, surveying, and development community. See comments at the end of this letter regarding this.
2. *Since there are building envelopes shown outside of the Zone A, does BFE really need to be established? Can a building permit's Elevation Certificate be accepted without BFE established in a formal way here?* Yes, the BFE really needs to be established, on which the ruling is straightforward and clear. Furthermore, if the building envelopes are determined to be outside of the floodplain, an Elevation Certificate is not even required. Moreover, if the building envelopes were in the floodplain, not only would an Elevation Certificate be required and a BFE established, but the BFE would have to be established using detailed methods and not simplified methods.
3. *Are simplified methods for determining BFE acceptable here?* When more than 5 acres are proposed for subdivision having a Zone A floodplain, FEMA guidelines allow a floodplain administrator, if felt appropriate, to permit the use of simplified methods only under two circumstances. One is if all building envelopes are shown to be outside of the floodplain and the terrain is very steep indicating that there is substantial elevation drop between the building envelope and the floodplain, which is not the case for the subdivision. The second condition is when the entire mapped floodplain is in an open space and use of a simplified method indicates that the floodplain within the subdivision boundaries truly would be entirely within the open space [I have reason to believe this could also include being entirely outside of building envelopes, although that is not directly stated or shown in figures]. FEMA-specified simplified methods are data extrapolation, which does not apply on this project, and contour



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.
Serving the Rocky Mountain Region Since 1992

interpolation, which using the present contours shown on the Preliminary Plat, would not be an acceptable solution. However, even if the contouring are refined past the site boundary so that it does not warp contours within edge of the site, it is still questionable as to whether this would even meet the criteria, let alone be an acceptable solution given the circumstances. Of particular concern to me is that contours are perpendicular to the stream rather than parallel, or there is a very flat alluvial fan condition. Also, approximately the west third of the site is sufficiently close to and upstream from the crossing with County Road 2000 West, which no doubt will result in some backwater, that the approximate zone is questionable. Although not mentioned in FEMA documentation as a simplified method, there are two other conditions which can legitimately be used as a simplified method. If the building envelopes are a safe height above either the potential overtopping as determined by weir analysis of an adjacent downstream barrier road or crossing, or by culvert or bridge headwater as determined by a detailed analysis, then the building envelopes could be considered out of the floodplain-- at least for the approximate west third of the site. However, going eastward, the elevation rises sufficiently to allow this type of determination to adequately indicate that the entire site could be out of the floodplain. Consequently, while simplified methods sometimes are allowed and are adequate and appropriate to indicate whether an area is in or out of the floodplain, I do not believe it is for this subdivision, and therefore detailed methods are required.

4. *If simplified methods are not acceptable for establishing BFE here, then what detailed methods would be acceptable and what would the minimum detailed methods be?* Surprisingly, "normal depth flow" hydraulic calculations are identified by FEMA as a detailed method, along with QUICK-2. However, these two methods do not account for any backwater conditions, which no doubt will be present because of the crossing of County Road 2000 West. As a result, I believe that the only appropriate way to determine the BFE is to use the other allowed detailed method, which is computer modeling using one-dimensional or two-dimensional modeling software approved by FEMA for use in floodplain studies. While this is not nearly so ominous and costly as may be assumed, clearly it is a recognized cost of significance for a two lot subdivision, but not nearly so costly as a potential cost of litigation and damage of real and personal property that is at stake.
5. *Who reviews and approves the BFE once it is completed? FEMA? Floodplain administrator?* In this particular case, both would. The County Floodplain Administrator would review for conformance or presumed conformance with the County floodplain ordinance, which again addresses all of FEMA regulation, or alternatively, a floodplain administrator could defer directly to the state NFIP coordinator's office or FEMA to review and approve prior to issuing a floodplain permit. Often non-engineering floodplain administrators choose the latter route because review of the information submitted is beyond their area of expertise, and rather than assume liability for themselves and the agency, they follow the latter procedure. However, that would delay any subdivision approval until things have gone fully through FEMA. Alternatively, if the floodplain administrator is knowledgeable of comfortable with reviewing and verifying conformance to ordinance requirements, the floodplain administrator could approve the proposed BFE and allow the subdivision process to proceed. However, there is a stipulation in the federal regulations that if a NFIP member receives updated information, or at least information of any significance, which this would be, then that member is to submit such information to FEMA within six months of receiving or approving such information. So in the end FEMA would receive the information, and may or may not opt to review and approve it. For what we are talking about here, which would be a detailed analysis of the floodplain between County



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.
Serving the Rocky Mountain Region Since 1992

Road 2000 West and the State Highway, I believe FEMA would review it and upon approval would issue a letter a map revision (LOMR).

6. *Could the applicant voluntarily restrict themselves to an approved house construction method (like slab on grade or building the habitable floor a few feet above grade) and then forgo the BFE study?* That is not a solution. First of all, the 5 acre or 50 lot subdivision criterion is not based at all on the building construction method. Secondly, it sounds a little bit like the question pertains to flood proofing, which is an allowed approach for commercial buildings, but not residential. Many become confused over this issue because, I'm told, in the national or international building code there is discussion about being in the floodplain with no established elevation, and to set the lowest finish floor at least 2 foot above the surrounding ground. However, that language is not consistent with or in conformance to FEMA regulations.

Essentially all of these questions are covered in the material that I sent you earlier, which I told you are part of training sessions that I have given in various situations in the past. It just so happens that Arnold Woolstenhulme was in attendance at one of them that I gave to the Eastern Idaho Professional Land Surveyor section, but clearly he could use a review. Furthermore, developers, engineers, planners, and other surveyors performing work, or realtors selling property, in the Teton basin in and around floodplains could stand to have a training session on development in approximate Zone A. Perhaps the County could sponsor that by covering my cost as a floodplain administrator to provide a few hours preparation, travel and few hours training on it, or alternatively I could set up something privately to teach such a course. There really seems to be a lot of misunderstanding regarding it, and unfortunately that misunderstanding or lack of knowledge results in people getting caught unawares, which I think causes more challenges and consternation than the actual issue of doing things correctly. Let me know. Thanks.

Sincerely,

Williams Engineering, Inc.

By: Gerald R. Williams, P.E., CFM

Curt Moore

From: A-W ENGINEERING [aweng@silverstar.com]
Sent: Wednesday, December 01, 2010 11:34 AM
To: Curt Moore
Subject: December 14th P&Z agenda

Curt: Please remove Heritage Peaks from the December 14th agenda; its pointless to be on the agenda while we still have outstanding issues. Please keep us posted on your discussions with the Commissioners concerning the 6 month extension. Since the flood plain issue had never been raised by Planning & Zoning before, we would have requested a year's extension if we had known this was going to be an issue. All discussions were only concerning the NP study. This issue wasn't raised until AFTER the extension hearing. Thankyou for your help,

Sharon Woolstenhulme
A-W Engineering
aweng@silverstar.com
phone: (208) 787-2952
fax: (208) 787-2957



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.
Serving the Rocky Mountain Region Since 1992

Floodplain Review Comments

On the

HERITAGE PEAKS SUBDIVISION

By Gerald R. Williams, P.E., CFM
Teton County Floodplain Administrator

Comments below in black text are dated 2/3/2011, and pertain to the report dated 1/18/2011.

Curt Moore sent to me a memorandum dated November 5, 2010 with a number of general floodplain management questions, Heritage Peaks Subdivision being the underlying purpose of the questions. I responded with answers in a November 11, 2010 letter (Letter) which I presume the applicant received a copy of, but it is submitted attached for convenience as I will reference it.

As per Letter answer #3, detailed methods must be used to establish the 100 year (1% annual chance flood) flow rates and base flood elevations (BFEs). We presume the report sealed 1/18/2011 is in response to the Letter.

I probably should clarify Letter #5 and provide updated thoughts. There are two courses of action. One is for the applicant to prepare a full fledged LOMR application (FEMA forms and very formalized documentation of hydrology and hydraulics), and submit for having the mapping changed through the subject property. A second approach is simply to show, using detailed methods, that the proposed building envelopes really are outside of the 100 year floodplain. I can approve that, and it would not be submitted to FEMA as a LOMR or to request any mapping change. This second approach would probably suit your purposes, would be a lot easier and quicker for you to address requirements, and is the approach I assume you are choosing. However, even with this second approach, the County must have sufficient analysis and documentation, acceptable to FEMA, for the County to approve any application, and to have it on file in case of an audit or other needs. Review comments that follow are based on the assumption that you are pursuing the second approach above rather than a mapping change. Because of limited data for review, future reviews may include new comments.

1. **Hydrology** Two methods are presented in the report for estimating the 100 year runoff. The first is the Rational Method, presented in the report on page 4 and page 5 paragraph 3. However, for a watershed as large as the one involved with this stream, it is doubtful that FEMA would accept the Rational Method, and for various reasons the County will not accept it. The second method used, as described on page 5 paragraph 3, is a procedure typically used for reality checks, but given the nature of this project *and the relatively large size* of the drainage area, it would be acceptable for a local drainage report; that is, a drainage report necessary only to satisfy local requirements. The method estimates watershed runoff based on runoff per square mile that has been estimated using more detailed methods in nearby watersheds. Using this procedure, a runoff rate of 1550 cfs was obtained. The described curve was not in the report, but in the past I too have prepared a similar chart of runoff curves plotting FEMA FIS, NRCS floodplain, and WEI floodplain values for the region based on runoff per square



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.

Serving the Rocky Mountain Region Since 1992

mile, the rate decreasing the larger the runoff area. Using Teton County FEMA FIS values, which seem appropriate compared to all the others plotted, at the size of 28.4 square miles for the watershed as per the Report, the value is approximately 54 cfs per square mile, or 1534 cfs, similar to what was presented. Consequently, I could accept the 1550 cfs were it not something that involves a FEMA map and NFIP regulations that must be documented with FEMA acceptable methods. And FEMA will not accept this method.

All discussion related to the Rational Method should be removed from the report. Although FEMA will not accept the similar runoff per square mile method, if desired, results could be discussed in the report and the curve provided, if presented only as a "reality" check. Only FEMA accepted methods can be used as the basis for establishing the hydrology.

Although it is not necessarily more accurate, a hydrological option that is just as simple to use and which FEMA typically will accept, and therefore the County will accept it, is a USGS regression analysis. There are manual procedures and DOS programming methods to use to perform the regression analysis to obtain flows, but the easiest is to use the online USGS's StreamStats program available at: <http://water.usgs.gov/osw/streamstats/idaho.html>. If it doesn't go directly to Idaho as it ought, select Idaho. Then click on the Interactive Map, zoom in by one of several means, select the Watershed Delineation from a Point a button and click the map at the stream and 2000 West Roadway, and it will draw your watershed and provide information regarding it (it says the watershed is 36.2 square miles rather than 28.4). Make sure your browser will allow pop-ups for this site, then click on the Estimate Peak Flows using Regression Analysis button and peak flows are calculated, including a 100 year flow rate of 1580 cfs. It is really that fast and that simple. It provides the watershed map, data, and answer, report ready. You certainly can use other FEMA accepted methods—I only mention this as a simple option if you are not already aware of it, but whatever you use, it must be FEMA acceptable and *fully* documented in the report.

2. **Roads and Bridges** Per Letter answer #4, detailed methods may, as appropriate, include simple normal depth flow calculations. However, also as per Letter #4, they would not be acceptable in this application because of the immediately downstream constriction of County Road 2000 West and a bridge, which would most likely cause backwater conditions for a distance upstream that must be considered in the evaluation. Therefore, we indicated in Letter #4 that FEMA accepted modeling software and practices must be used to evaluate the BFEs. HEC-RAS modeling software was referenced in the Report, but no electronic file was submitted for review, but even so, from the table on Report page C-1 and the Flood Plain Study map cross sections (page A-1), it is apparent that the model did not include crossing roads or bridges, and is therefore not evaluating any backwater condition from them. This would not be acceptable to FEMA and is not acceptable to the County. Proper HEC-RAS procedures for evaluating bridge flows must be used, which involves 4 cross sections with specific locations and conditions for each bridge. This must be used on County Road 2000 West to properly identify the backwater condition onto the site. The bridge on Hwy 33 must also be evaluated to determine the flow characteristics coming onto the site, verifying the flow rate, flow velocity, and even more importantly, that it all arrives through the bridge opening and none from weir overflow of the road that could potentially widen the floodplain on the site. The model must be FEMA



STUDIES - MASTERPLANS - DESIGNS - CONSTRUCTION SERVICES - REVIEWS

WILLIAMS ENGINEERING, INC.
Serving the Rocky Mountain Region Since 1992

worthy and acceptable.

3. **Report discussions and conclusions** regarding flow velocities and capacities of the channel, overbanks, and bridges should be based on model results and nothing else.
4. **Page A-1 Floodplain Limit Plotting** Once the HEC-RAS model is revised to include the roads and bridges, the water surface elevations will likely be different. However, it may be well to note now that the water surface elevation calculated is the point on the ground where the edge of the floodplain is, but that is not how the map is currently drawn. The edge of the floodplain will, to some extent parallel the contours except that the water surface elevation will be decreasing in the downstream direction. The floodplain delineation thus will not necessarily be a smooth curve more or less paralleling the river channel. For example, at cross section 1.83 (which is not labeled but should be), the WSE was calculated as 6102.2, but the floodplain limit is plotted approximately 85 feet away at elevation 6103.9 +/- . At cross section 1.85, the WSE was calculated as 6103.8, but the floodplain limit is plotted approximately 85 feet away at elevation 6105, and the limit crosses that contour several times. Between cross sections 1.70 and 1.75, nearly all the ground on the site south of the stream is below the calculated flood level, but the plotted floodplain limit shows it not being in the floodplain. Again, where the calculated and interpolated floodplain elevations match the terrain is where the limit is, and that likely will not result in a smooth floodplain curve following the stream.
5. **Data Containment of Flows** Be sure to provide base mapping that shows by contours full containment of the river flows (right now it does not as noted in (4) above), AND the HEC-RAS cross sections (graphics and data input) MUST extend at least as far out as the calculated flow.
6. **Cross Section Alignments** These are to be perpendicular to the flow. Consequently, where crossing the channel, they should be perpendicular to the channel. In the overbanks, they generally are perpendicular to the overall main channel flow direction, somewhat as shown. However, cross section 1.75 has weird bends, and cross section 1.85 heads due north from the channel and even crosses section 1.91, which cannot happen. Instead, it should head north northwest more perpendicular to the overall overbank flow direction. Flow distances between cross sections that are used in the model should be adjusted to be the modified distances between cross sections, channel lengths following the meandering channel, and overbank lengths being more the overland "as the crow flies" lengths approximately at the centroid of overbank flow..
7. **Page C-1** Provide an exhibit of the full limits of the watershed area and not truncated. If you use StreamStats, it will provide the needed exhibit.
8. **South Leigh Creek** All information presented in the report pertains to Spring Creek. No mention was made in the report of South Leigh Creek that is discussed in the wetlands report prepared by Lone Goose Environmental as intersecting the property and joining Spring Creek. The map on page A-1 shows AW Engineering computed 100 year floodplain delineation heading southwest just east of the proposed House Site 1. I suspect this may be the other creek coming in. If there is another creek on the site as mentioned, it must be properly contoured on the map AND evaluated hydrologically and hydraulically the same as for Spring Creek, using a confluence in the HEC-RAS model.